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Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS,

118.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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Room 1123, New Post Office Building, Chicago, Illinois, September 8th, 1936.

Met, pursuant to adjournment, 11 A. M. E.S.T.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

- J. R. MARTIN, Esq., appearing for the Federal Trade Commission.
 - M. A. ALBERT, Esq., George Feldman, Esq., and Herbert S. Keller, Esq., appearing for the Fashion Originators Guild of America, Inc.

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ADEXANDER H. MARSHALL, of Marshall and Marshall Chicago, Illinois, appearing for the Michigan Avenue Guild of Chicago.

MRS. FRANCES MALSH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Mr. Martin: I think she was sworn the other day, your Honor.

Direct examination by Mr. Martin.

9501

Q. Now, Mrs. Malsh

The Reporter: What is the witness' name, please?

Mr. Martin: Mrs. Malsh, M-a-l-s-h.

By Mr. Martin.

Q. Now, Mrs. Malsh, where do you live? A. 5120 Harper Avenue.

Q. Chicago? A. Chicago.

/ Q. Have you any occupation, Mrs. Malsh? A. Well, yes, I have. I am in the ladies' wearing apparel.

Q. Where do you conduct your business? A. At the same address, 5120 Harper Avenue.

Q. How long have you been engaged in the sale of ladies' wearing apparel? A. Almost tifteen years.

Q. At the same location? A. No. I originally had a very exclusive floor shop, ground floor shop.

Q. Where was that located? A. At East Seventy-first Street in Chicago.

Q. How long have you been in your present position?

A. I have been there about four years, three and a half, four years, somewhere around there.

Q. Now, you say you are engaged in women's apparel. Just what lines do you handle? A. Right at the present time?

Q. Yes. I mean, do you handle diesses? A. Dresses, silk dresses and knit wear, high-grade knit wear.

Q. What price lines? A. Wholesale price lines?

*Q. Yes. A. Well, mostly from \$16.75 up to around \$29.75, a few at \$10.75.

Q. What markets do you purchase your stock in? A. Well, New York market.

Q. Do you use any other market? A. Not at the present time. I haven't the last two years. I used to use the Chicago market but for quite a few years I have used the New York market entirely.

Q. Have you ever heard of the Fashion Originators Guild of America? A. Yes, I have.

Q. When did you first hear of it? A. About two years ago.

Q. About two years ago? A. '34.

Q. Have you ever signed a declaration of co-operation with the Fashion Originators Guild? A. I did.

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. . .

Mr. Albert: That is objected to, if it please the Court, as immaterial and irrelevant.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

The Witness: I did.

By Mr. Martin.

- Q. Do you recall when you signed this declaration, Mrs. Malsh? A. Shortly after I came back from New York. I just don't know the exact date.
 - Q. Do you know the year? A. The Guild?
 - Q. I say the year in which-

9506

Examiner Bennett: Yes, she said she did. The Witness: I didn't ket that.

By Mr. Martin.

- Q. What year was it? A. Guild? Michigan Avenue Guild?
 - Q. No, mam. Year, y-e-a-r. A. Oh, that was in 1934.
 - Q. Yes. A. Yes.

Mr. Albert: The spring or the fall?

By Mr. Martin.

Q. Was it in the spring or in the fall? A. It was in the fall because I was in New York in September—no, I was 950' in New York in July. It was in the fall.

Mr. Martin: Mark this for identification.

(The paper referred to was marked Commission's Exhibit 735 for Identification.)

By Mr. Martin.

Q. Do you recall whether or not you ever received any communication from the Guild, about this? A. Yes, I did.

- Q. I hand you Commission's Exhibit No. 735 for Identification and ask you if you can identify that? A. Yes, sir, I do.
- Q. What is it? A. Well, when I was in New York-
- Q. Just state what it is. Don't say what it says. What is that? A. It is a declaration of co-operation.
- Q. No. This is a letter from whom to whom? A. Mr. Golby.
 - Q. To whom? A. To myself.
- Q. Under what date? A. Under the date of August 20th.
 - Q. Was that letter received by you? A. Yes, it was

Mr. Martin: I offer that letter in evidence.
Mr. Albert: No objection.
Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Commission's Exhibit 735, was received in evidence.)

By Mr. Martin.

Q. Referring to the last paragraph of Commission's Exhibit No. 735, which says: "Will you therefore kindly get in touch with the secretary of this local organization, Mr. Edward A. Fletcher, Michigan Avenue Guild of Chicagó, 840 North Michigan Avenue, who will be pleased to go over this matter thoroughly with you?" Pursuant to that, did you get in touch with Mr. Fletcher? A. Yes, I did.

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Q. Did you make any application to join the Michigan Avenue Guild? A. Well, we had quite a lengthy conversation, Mr. Fletcher and I, and he explained the whole thing to me, and said he would put it before the Guild.

Q. I hand you Commission's Exhibit No. 225 for Identification and ask you if you can identify that paper. A. Yes, I do.

- Q. Now, what is it? A. Well, it is an application of the Michigan Avenue Guild.
 - Q. Signed by whom? A. By myself.
 - Q. What is the date? A. December 21, 1934.

Mr. Martin: I offer this in evidence.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 225, was received in evidence.)

By Mr. Martin.

9512

Q. Did you ever receive any reply to this? A. Yes, sir. I received a reply, saying that—

Mr. Albert: That is objected to, and may it please the Court, as to what the reply said. The best evidence of the reply is the letter.

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 226 and ask you can you identify that? A. Yes, I do.

Q. Now, what is it? A. That is the reply to my application. They refused to admit me:

Q. Dated what? A. January 4, 1935.

Mr. Albert: I ask that that part of the witness' answer that characterizes the letter be stricken, as not responsive.

By Mr. Martin.

Q. Is this the letter you refer to as your reply to your application? A. Yes, it is.

Mr. Martin: I offer that in evidence.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The letter referred to was marked Commission's Exhibit 226 and received in evidence.)

By Mr. Martin.

- Q. Now, in the fall of 1934, what markets were you using for the purchase of your goods? A. The New York market.
- Q. Do you recall some of the manufacturers you dealt with at that time? A. I dealt with Feigenbaum & Adelson, David Crystal.
- Q. Any others? A. I think L. C. Rosenblatt. I just don't recall anyone else. I don't know as there was anyone else, outside of Knitwear.
 - Mr. Martin: I will ask that these three documents be marked for identification Commission's Exhibits 736, 737 and 738 for Identification.

(The documents referred to were marked Commission's Exhibits 736, 737 and 738, respectively, for Identification.)

By Mr. Martin.

- Q. I hand you Commission's Exhibit No. 736 for Idéntification and ask you can you identify that? A. Yes, that is the duplicate of my copy.
- Q. What is it? A. It is a duplicate of a copy of an 9516 order I gave.
 - Q. Who was the order placed with? A. With David Crystal.
 - Q. What was the date of it? A. December 12, 1934.

Mr. Martin: I offer that in evidence, if the Examiner please.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The document referred to, heretofore marked for identification Commission's Exhibit 736, was received in evidence.)

By Mr. Martin

- Q. Now, Mrs. Malsh, were the goods which were ordered in that order, which is Commission's Exhibit 736, shipped to you? A. No, they were not.
- Q. Did you ever receive any communication from David Crystal relative to those goods? A. Yes, I did.
- Q. What did he advise you in his letter? A. He advised me——

Mr. Albert: That is objected to, may it please the Court. The letter is the best evidence.

By Mr. Martin.

- Q. Can you identify this? (Handing to the witness Commission's Exhibit 737 for Identification.) A. Yes, I do.
- Q. What is it? A. It is a letter received from David Crystal in reference to my order.
 - Q. Of what date? A. December 19, 1934.

Mr. Martin: I offer it in evidence, if the Examiner please.

Mr. Albert: This is objected to, if the Court please on behalf of the respondent F.O.G.A., as being irrelevant and immaterial to the issues presented by the Commission; upon the further ground that no proper foundation has been laid, no proof of the authority of anybody to send this particular letter, there is no proper signature affixed to the letter; and upon the further ground that the contents thereof are not binding upon the F.O.G.A.; and, further, upon the ground that it

referred to a letter of the witness to Mr. Crystal, or David Crystal, Inc., dated December 14, which letter has not, as yet, been presented, and without which Commission's Exhibit No. 737 for Identification, I believe, is unclear.

Examiner Bennett: Overruled. It may be received.

Mr. Albert: Exception.

(The letter referred to, heretofore marked for identification Commission's Exhibit 737, was received in evidence.)

9521 By Mr. Martin.

- Q. I hand you Commission's Exhibit No. 738 for Identification and ask you if you can identify that? A. Yes, I do.
- Q. What is it? A. It is a letter from David Crystal. . canceling my order.
 - Q. What is the date?

Mr. Albert: I object to the characterization by the witness of the letter. I think it is about time that Mr. Martin informed the witness not to tell us what the contents of a letter are until it is in evidence:

Mr. Martin: I would like to call your attention to the fact that that has already been done, as you . know, Mr. Albert.

9522

By Mr. Martin.

- Q. That is a letter from whom to whom? A. That is from David Crystal to myself, canceling the
- Q. Do not say what it is, or what it says, rather. It is a letter from Crystal to you? A. A letter from Crystal to me.

Q. Under what date? A. Under date of December 27, 1934.

Mr. Martin: I offer it in evidence.

Mr. Albert: That is objected to, if the Court please, as not binding upon the respondent F.O.G.A., no proper foundation has been laid with respect to the authority of anybody to write this particular letter, inasmuch as no signature is affixed thereto, and there is no proper foundation laid as to the mailing thereof; further, upon the ground that the letter is immaterial to the issues set forth by the Commission with respect to the respondent F.O.G.A.; and, further, upon the ground that the contents thereof, insofar as they refer to the F.O.G.A., are made without authority and no proper foundation has been laid with respect thereto.

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Examiner Bennett: Overruled.

Mr. Albert: Exception.

(The letter referred to, heretofore marked for identification Commission's Exhibit 738, was received in evidence.)

Mr. Martin: I will ask that these two documents be marked, respectively, for identification, Commission's Exhibits 739 and 740.

(The documents referred to were marked Comrussion's Exhibits 739 and 740, respectively, for Identification.)

9525

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 739 for Identification and ask you if you can identify that? A. That is a copy of an order I placed with Feigenbaum & Adelson on August 1, 1935.

Mr. Martin: I offer that in evidence, if the Examiner please.

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(The document referred to, heretofore marked for identification Commission's Exhibit 739, was received in evidence.)

By Mr. Martin.

- Q. Was this order filled, Mrs. Malsh? A. Beg parden?
- Q. Was this order filled? A. No, it was not.
- Q. Did you ever receive any communication from the manufacturer? A. Yes, I did.
- Q. I hand you Commission's Exhibit No. 740 for Identification and ask you can you identify that? A. Yes.
- Q. What is it? A. It is a letter received from Feigenbaum & Adelson, dated August 2nd.
 - Q. Was this received by you? A. Yes, it was.

Mr. Martin: I offer that in evidence, if your Honor please.

Mr. Albert: Objected to, may it please the Court, upon the ground that no proper foundation has been laid; and the further ground that Commission's Exhibit 740 is in no way binding upon the respondent F.O.G.A.

Examiner Bennett: Overruled. It may be received.

(The letter referred to, heretofore marked for identification Commission's Exhibit 740, was received in evidence.)

By Mr. Martin.

Q. Subsequent to the receipt of this letter from Feigenbaum & Adelson, what did you do, Mrs. Malsh? A. I

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didn't do anything-well, I don't know what reference you mean,

Q. Did you get in touch with the Guild in any way? A. No, I did not, not at that time.

Mr. Martin: I will ask that this letter, consisting of two sheets, be marked for identification Commission's Exhibit 741-A and B.

(The letter referred to was marked Commission's Exhibit 741 A and B for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 741-A and B and 9530 ask you can you identify that? A. Yes, I do.

Q. What is it? A. It is a letter written by me on August 7th, 1935, to the Guild, a copy of a letter.

(Letter referred to was handed to Mr. Albert.)
Mr. Albert: No objection, if it please the Court,
subject to investigation as to the receipt thereof by
the F.O.G.A.

Mr. Martin: I have an answer to that.

Examiner Bennett: Was that letter sent to the F.O.G.A.? Was the letter sent to the Guild?

By Mr. Martin.

Q. Was that letter sent to the Guild? A. Oh, yes, sir. That is a copy of a letter that was sent to the Guild.

9531

Examiner Bennett: Received.

The letter referred to, heretofore marked for identification Commission's Exhibits 741-A and B, was received in evidence.)

Mr. Martin: Mark this for identification.

(The paper referred to was marked Commission's Exhibits 742-A and B for Identification.)

Mr. Albert: No objection to Commission's Exhibit No. 742-A and B.

(The letter referred to, heretofore marked for identification Commission's Exhibits 742-A and B, was received in evidence.)

Mr. Martin: I offer 741 in evidence. Examiner Bennett: It is received.

By Mr. Martin.

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Q. Now, Mrs. Malsh, will you refer to Commission's Exhibit No. 741-A and B, for the purpose of refreshing your recollection.

(Witness reads Commission's Exhibits 741-A and B.)

By Mr. Martin.

Q. Now, after having refreshed your recollection from Commission's Exhibit No. 741-A and B, will you tell me whether or not after the receipt of this letter from Feigenbaum and Edelson, in which this language occurs, Commission's Exhibit No. 740: "However, we regret to advise you that in view of the fact that we have a red card for your account from the Fashion Originators Guild, and as we are Guild members we are not permitted to ship merchandise to you." Did you or not make any further attempt to sign a declaration of co-operation with the Fashion Originators Guild? A. Yes, I did.

Q. Did you receive any communication from them in reply to your letter? A. Yes, I did.

Q. Did they accept your membership? A. No, they did not.

- Q. Now, Mrs. Malsh, since the date of that letter, Commission's Exhibit No. 742-A and B, which is dated August 12th, 1935, have you made any further effort to become affiliated with either the Fashion Originators Guild or the Michigan Avenue Guild? A. Well, yes. When I was in New York in July, I called on Mr. Golby.
- Q. What took place? A. Why, you want me to tell what took place?
- Q. Yes. A. Well, I went around and I found that they were all Guild members and I couldn't-
- Q. Found— A. Different manufacturers, and I couldn't get merchandise. And I called on one manufacturer that I had done business with last year, and as I was going I noticed the Originator Guild sign, or whatever you would call it, in the room, so I said to the young lady that waited on me, "Are you Guild members?" And she said, "Yes." Well, I said, "I am afraid you can't sell me that."
- Q. Do you recall what manufacturer that was? A. That was Dolces.
- Q. All right, go ahead. A. And she said, "Wait. I will go and see if there is a red card." So she went back and she came back and said, "Yes, there is a red card for you." So I continued, finally in a fit of desperation, I thought, well, I am just going to go back there and speak to them. So I spoke to Mr. Anthom, I think his name is, and I said, "Mr. Anthom, what am I going to do?". I said, "I have got to have merchandise. I came down for the purpose." And I said, "I see a number of things here I want, and you have me red carded." He said, "Tell me what it is all about. Why won't they admit you?" I said, "Simply because I have an upstair dress shop." I said, "I have been in the business a great many years. And I said, "I have never violated a rule." And he said, "Why don't you go over and see Mr. Golby?" And I said, "Oh, well, I don't think it will do any good. I have had it threshed

back and forth." So he said, "Well, I am going to call him up." I said, "All right, if you want to, you can do that."

- Q. Did he call Mr. Golby then? A. Yes. He said maybe he can fix something up for you. "Maybe he can get together with you." And so I said "All right." So he called him up.
- Q. Did you go over and see Mr. Golby? A. He came back and said, "Mr. Golby said he would be glad to talk to you." I should go over there.
- Q. Well, now, what took place when you went to see Mr. Golby? A. Well, we had a very lengthy conversation and I explained everything in detail to him and told him everything, and of course he talked a long while, and he finally said he would call up his lawyer to find out. I said, "Mr. Golby, can't you do something for me? What can you do for me?" "Well," he said, "Let me call up my lawyer." Well, he went out of the room, called up his, lawyer, and came back and said, "Well, I don't know. I don't think at this time we can do anything inasmuch as you are subpoenaed." He said, "I don't think we can do anything for you."
- Q. What was it? Inasmuch as you were— A. As I was subpoenaed by the Federal Commission that they couldn't do anything for me.
- Q. Since that time have you been able to get any merchandise? A. No.
 - Q. From Guild manufacturers? A. No, I have not.
- Q. Do you recall when was the last time you were able to get any merchandise from a Guild manufacturer? A. Well, I got a couple of things from non-Guild, but not what I want, and not what I should have.
- Q. I mean, Guild manufacturers. Do you recall when was the last time you were able to get anything from Guild manufacturers? A. Last year. The first time I think it was in '34. It was in '34 when I was there; that

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is, when I didn't know so much about the Guild and they weren't so many in the Guild association.

Q. Now, Mrs. Malsh, has your inability to purchase garments manufactured by members of the Guild had any effect on your business? A. Oh, it certainly has.

Q. What effect? A. Well-

Mr. Albert: That is objected to, if it please the Court.

The Witness: It is impossible for me to tell-

Mr. Albert: That is objected to.

Examiner Bennett: Just a moment.

Mr. Albert: As calling for a conclusion of the witness, no proper foundation has been laid. 9542

Examiner Bennett: Overruled.

By Mr. Martin.

Q. Go ahead and answer. A. My trade has been-

Mr. Albert: Exception.

The Witness (continuing): —has been mostly high-class trade, because they have been with me for years. I have had the same clientele practically ever since I have been in business with few exceptions. And they have been accustomed to buying very high-grade stuff from me and having the proper treatment. And naturally a great many just depend upon me to get their things for them.

9543

Well, I can't sell them a \$22.75 or a \$19.75 garment when they are accustomed to paying \$55 and \$65, \$45. And I can't present it to them, and they won't buy it. They say, "Well, what is the matter with your stuff? It isn't like it used to be."

By Mr. Martin.

- Q. Have you been able to replace the garments that you formerly bought from Guild manufacturers with garments from non-Guild manufacturers? A. Oh, no, I have not. I have not.
 - Q. You haven't been able to find any.

Mr. Martin: That is all.

Cross-examination by Mr. Marshall.

- Q. Mrs. Malsh, you testified that you made an application for membership in the Michigan Avenue Guild of Chicago, December 21, 1934; is that correct? A. Yes, I believe so.
 - Q. And at that time where were you selling your merchandise from? A. From my home.
 - Q. At what address? A. 5120 Harper Ayenue.
 - Q. In Chicago? A. Chicago.
 - Q. That is the address given on the application that you filed for membership as shown on Commission's Exhibit No. 225? A. Yes.
 - Q. How long have you been in the business of selling dresses and knitwear at retail prior to that date? Λ . Well, I have been in the business almost fifteen years selling dresses.
 - Q. In what capacity? For yourself? A. For myself,
 - Q. Where were you in business prior to the time you were selling from 5120 Harper Avenue? A. Well, I originally was on East Seventy-first Street. I was one of the pioneer exclusive dress shops out there.
 - Q. Was that in an apartment or in a store? A. No; that was on the ground floor, a large shop.
 - Q. That was a retail store? A. Yes, sir.
 - Q. On the ground floor. What experience have you had in buying merchandise of this type? A. Well, I feel that I have had a great deal of experience.

Q. Have you been buying throughout this period of fifteen years? A. Oh yes, sir.

Q. Now, directing your attention to the apartment at 5120 Harper Avenue, from which you were selling these dresses and knitwear at retail at the time that you filed your application for membership in the Michigan Avenue, Guild. What floor of the building is that apartment on?

Mr. Martin: That is objected to as irrelevant.

The Witness: Second.

Mr. Martin: Irrelevant and immaterial.

Examiner Bennett: I will let her answer.

Mr. Martin: All right.

The Witness: Second floor.

9548

By Mr. Marshall. .

Q. How many floors are there in the building?

Mr. Martin: Objected to. The same objection.
The Witness: Three with a——

Examiner Bennett: I will let her answer.

The Witness: Four, I might say.

By Mr. Marshall.

Q. How many apartments are there in the building? A. I don't know how many. A great many. Fifty.

Q. It is a residential apartment building? A. Yes, sir.

Q. There are no stores in the building? A. No, none 9549 whatsoever.

Q. You had a conversation with Mr. Fletcher at the time you gave him your application for membership? A. Yes, I did.

Q. And isn't it a fact that he called your attention at that time to a rule of the Michigan Avenue Guild which limited membership to persons conducting their business from retail shops and excluding persons selling from their living quarters? A. Yes.

Q. And residential apartments? A. Yes.

Q. He explained that to you? A. Oh, yes, he explained it.

Q. So that you realized at that time that the place from which you conducted your business did not make you eligible for membership in the Michigan Avenue Guild? A. Yes. May I add something? Mr. Fletcher, at the time, asked me if I could not readjust myself in some way to comply with the Guild rulings.

Q. With the Guild rules? A. Yes. I did try to do that, which I thought I was doing.

Q. He called your attention, did he not, to the fact that the rule confined membership to those who sold merchandise openly and in the regular retail manner, from regular retail premises, and did not conduct their business from a private residence or home, or from residential suites or quarters in any hotel or apartment building, whether used as or in connection with living quarters or not, did he not? A. He explained it all to me.

Q. And his suggestion was prompted by a desire to have you come into the Guild if you could qualify, is that correct?

Mr. Martin: That is objected to.

Examiner Bennett: I will sustain the objection to that. She could not know that.

9552 By Mr. Marshall.

Q. Mr. Fletcher did state that he would like you to readjust your arrangements, so that you would become eligible for membership? A. No, he didn't say that.

'Q. No? 'A. He didn't say that.

Q. What did he say? A. He asked me if I couldn't figure out some way in which I could comply, if there was such a thing possible; but that was all that was said.

- Q. Now, let me ask you, do you know that that district in which you were then residing was zoned under the city ordinance for residential purposes only?
 - Mr. Martin: Objected to, as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: Sustained.

By Mr. Marshall.

Q. Are you familiar with the zoning ordinance of the City of Chicago in force at that time? A. No, I am not.

Q. And did you know that under the zoning ordinance at that time, the district in which you lived was zoned for apartments only?

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Mr. Martin: Objected to, your Honor. The witness has already testified that she was not familiar with the zoning ordinance.

Examiner Bennett: Yes. I will sustain the further objection to it. It would be an affirmative defense.

Mr. Marshall: Except I am asking her now whether she knew that that district was not zoned for apartments only. She can answer that "yes" or "no."

Examiner Bennett: She has already answered. Mr. Martin: She has already answered.

Mr. Marshall: No. She answered that she did not know the provisions of the ordinance. Now, I am asking her whether she did not know that the district was zoned for apartments only.

Examiner Bennett: She said she did not know the provisions of the ordinance. I will sustain the objection to it any further.

Mr. Marshall: Exception.

Examiner Bennett: That is an affirmative deferse, which you may very well make, in case you

have it to make. I am not going to mess up the record with conjecture that there might be such an ordinance.

Mr. Marshall. We would like to make the offer of proof, if the Court please, to the effect that if the witness were permitted to answer that question, she would testify that she knew that district was zoned for apartments only.

Mr. Martin: I move that the offer of proof be stricken.

Examiner Bennett:) It may be stricken, as not founded upon the statement of the witness, or as negative to the statement of the witness.

9557

By Mr. Marshall.

Q. Did you at that time have a retailer's license to do business at that apartment?

Mr. Martin: I object to that, as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Marshall: Exception.

Mr. Albert: Exception on the part of the F.O.G.A.

By Mr. Marshall.

Q. Were you making returns under the Illinois Retailers' Occupational Tax Act at that time, as a retailer?

Mr. Martin: Objected to, as irrelevant and immaterial.

Examiner Bennett: I will sustain the objections along that line.

Mr. Albert: Exception, by the F.O.G.A.

Mr. Marshall: Exception. I should like to submit the offer of proof, to the effect that if the wit-

ness had been permitted to answer, she would have testified she does not make returns and reports and payments under the Retailers' Occupational Tax Act.

Mr. Martin: I move it be stricken.

Examiner Bennett: It may be stricken, as irrelevant.

By Mr. Marshall.

Q. You made your application for membership in M.A.G., Michigan Avenue Guild, December 21, 1934, that was the time at which you had your conversation with Mr. Fletcher? A. Yes.

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- Q. And he explained that, under the rules, you could not be eligible for membership while conducting business from your apartment? A. Yes.
- Q. And you received a letter from Mr. Fletcher, under date of January 4, 1935, Commission's Exhibit 226, declining your application for membership? A. Yes.
- Q. Did you ever have any conversation with Mr. Fletcher subsequent to that time? A. No, I did not.
- Q. Did you ever make another application for member, ship in the Michigan Avenue Guild? A. Yes, I did.
- ^b Q. When? A. After I thought, or I felt I had readjusted myself, according to Mr. Fletcher's suggestion, that is, segregating my business from my living apartments.
 - Q. Was that a written application? A. What's that?

Q. Was that a written application? A. Well, I believe I stated so in my letter to the Guild in New York.

- Q. Are you sure that that was addressed? Is this the letter you refer to (Mr. Marshall showing document to the witness)? A. That is the letter I wrote to the New York Guild.
- Q. That is Commission's Exhibit 741 A and B? A. That is a copy of the letter.

* .

- Q. And that is the letter you have just referred to? A. Yes.
- Q. As being that subsequent application for membership? A. Yes.
- Q. But that was directed to the Fashion Originators Guild of America in New York, was it not? A. Yes.
- Q. Let me ask you again, then, did you ever, subsequent to January 4, 1935, renew your application for membership in the Michigan Avenue Guild? A. No, I did not.
- Q. Now, in the letter addressed to the Fashion Originators Guild, under date of August 7th, 1935, being Commission's Exhibit 741-A, to which you have just referred, you made some reference to changes in conditions affecting your selling, did you not? A. Yes.
- Q. And you referred to the fact that you had salesmen out in an automobile? A. I didn't say I had salesmen out, no.
- Q. That you were selling from automobiles? A. Not from my automobile. I went to and fro for my appointments, in an automobile.
- Q. That is, men solicited your customers— A. To my customers.
- Q. (Continuing) —from door to door? A. No. I beg your parden.
- Q. You went to your customers? A. I had a special appointment with my customers before I ever went. I never went unless I had an appointment.
- Q. And you did no selling from your apartment? A. Absolutely none.
- Q. How did you make those appointments? A. How is that?
- Q. How did you make these appointments? A. Over the phone, and through the mail.
- Q: Were these appointments over the 'phone made from your apartment? A. From my apartment, of course.

- Q. And were these letters sent, making appointments, addressed from your apartment? A. Well, most naturally.
- Q. And this was contemporaneously with the date of that letter, August 7, 1935? A. Yes.
- Q. But you never filed another application for membership with the Michigan Avenue Guild, did you? A. Not with the Michigan Avenue Guild, no. I felt that I should take it up directly with the New York Guild.

Mr. Marshall: I will ask to strike the latter part of the answer as not responsive, if the Court please. Examiner Bennett: It may be stricken.

9566

By Mr. Marshall.

Q. Did you have a peddler's license? A. I am not a peddler.

Mr. Martin: That is objected to as immaterial and irrelevant.

By Mr. Marshall.

Q. You testified you occupied the second apartment at that time? A. Yes, sir.

Mr. Martin: That is objected to as repetition. She has already answered that question.

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception.

Mr. Marshall: Exception.

9567

By Mr. Marshall.

Q. Who occupied the apartment above you at that time?

Mr. Martin: Objected to, as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Marshall: Exception.

By Mr. Marshall.

- Q. How long after January 4, 1935, did you continue in business at 5120 Harper Avenue? A. Well, I just don't know. I am still living there, I am still living there.
- Q. Are you still selling from there? A. No, I am not. Partially, if people want to come.
- Q. You carried a stock? A. Since my rulings did not affect the Guild.
- Q. Do you still carry a stock of merchandise in your apartment?

Mr. Martin: That is objected to, as irrelevant and immaterial.

Examiner Bernett: I will let her answer.

Mr. Martin: You can answer.

A. Yes.

By Mr. Marshall.

- Q. You carried your stock of merchandise in your apartment January 4, 1935, did you not, at the time your application for membership in the Michigan Avenue Guild was rejected? A. In the Michigan Avenue Guild, yes
- Q. In contacting your customers personally by carrying your cases in your automobile to your appointments, did you carry samples?

9570

Mr. Martin: That is objected to as irrelevant and immaterial, if your Honor please.

Examiner Bennett: Sustained.

By Mr. Marshall.

Q. Since the date, January 4, 1935, have any customers come to your apartment and selected garments in your apartment?

Mr. Martin: That is objected to. She has already answered that.

Examiner Bennett: I will let her answer.

Mr. Martin: You may answer.

A. No, not many. Maybe one, possibly, I may. They all prefer the way I was working.

By Mr. Marshall.

Q. Do any of them come? Have any of them since that date? A. No. Well, possibly one or two, but outside of that, not; and that is only by special appointment.

Q. You do not refuse to sell them if they come to your

apartment? A. What's that?

Q. You do not refuse to sell them if they come to your apartment? A. Right now, no. I would if my application had gone through.

Mr. Marshall: That will be all.

Mr. Martin: That's all.

Mr. Albert: The respondent F.O.G.A. would like to ask some questions.

Mr. Martin! I beg your pardon.

Examiner Bennett: All right.

Mr. Marshall: Perhaps I should, for the record, make it clear that the cross-examination just completed was on behalf of the respondent Michigan Avenue Guild of Chicago.

9573

By Mr. Albert.

Q. You testified, Mrs. Malsh, that you purchased dresses at cost at \$16.75? A. At what?

Mr. Martin: At cost, at \$16.75.

The Witness: Yes, yes.

By Mr. Albert.

Q. What did you customarily sell those dresses for at retail?

Mr. Martin: That is objected to, as irrelevant and immaterial.

Examiner Bennett: What is the question? (Question read by the reporter.)

Examiner, Bennett: Objection sustained.

Mr. Albert: Exception.

By Mr. Albert.

9575 Q. Do you still do business at 5120 Harper Avenue?

Mr. Martin: Objected to. That question has alveready been asked.

Examiner Bennett: Sustained. It has already been gone into.

By Mr. Albert.

Q. Now, Mrs. Malsh, do I understand correctly from Commission's Exhibit No. 741, that after the time in that letter you took two apartments at 5120 Harper Avenue? A. No; I never said I took two apartments.

Q. What did you mean by the following statement in Commission's Exhibit No. 741: "I gave up my apparel studio in this fashionable building and took a small living apartment for myself and dependents"? A. Well, I. took a second apartment, yes

Q. And gave up the previous one? A. Gave up the previous one and took this small apartment. The other one was a small apartment, too, but I lived more privately in a different location.

Q. In the building? A. In the same building.

Q. Where did you keep the stock which you had previously in the old apartment?

Mr. Martin: Objected to. She has already answered that question on cross-examination.

Mr. Albert: I don't think it was very clear, your Honor.

Examiner Bennett: That ground has all been gone over.

Mr. Albert: Very well, your Honor.

By Mr. Albert.

Q. Did you have a lease for the first apartment which you had in The Sadonia?

Mr. Martin: Objected to as irrelevant and immaterial.

9578

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

• Q. Have you at present a lease on your apartment in The Sadonia?

Mr. Martin: The same objection.

Examiner. Bennett: Sustained. It is irrelevent.

By Mr. Albert.

Q. Do you employ any salespeople of any kind in connection with your business?

Mr. Martin: Objected to. She has already testified as to that on cross-examination.

Examiner Bennett! Sustained.

By Mr. Albert.

Q. Do you employ any models in connection with your business?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. Do you employ any help of any kind whatsoever in connection with your business?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception. I offer to prove that if the witness has been permitted to answer the question, the answer to the questions as to whether she employed any help in connection with her business would have been in the negative.

Mr. Martin: I move that the offer of proof be stricken as irrelevant and immaterial.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception.

Examiner Bennett: Do you have a considerable cross-examination?

Mr. Albert: I am afraid so, your Honor.

Examiner Bennett: Well, we will take a recess for lunch, then. I will ask you to come back after luncheon.

Mr. Martin: Be back at two o'clock.

(Whereupon, at 12.30 o'clock P. M., the hearing in the above entitled matter was adjourned until 2.00 o'clock P. M., of the same day.)

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9581

AFTERNOON SESSION-2 P. M.

Examiner Bennett: Be in order, please.

Mr. Albert: No more questions of Mrs. Malsh.

Examiner Bennett: You have another witness; have you?

(Witness excused.) '9

Mr. Martin: Will you come around, please.

Examiner Bennett: You will be sworn, please.

FLORENCE W. HERTZ, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

9584

Direct examination by Mr. Martin.

Q. Miss Hertz, will you please state your name and address, please? A. You want my residence address?

Q. Yes, mam. A. Florence Hertz, H-e-r-t-z, 1111 Hyde Park Boulevard.

Examiner Bennett: What is the name, please?

The Witness: Hertz, H-e-r-t-z, Hertz.

Mr. Martin: Hertz.

By Mr. Martin.

Q. What is your occupation, Miss Hertz? A. Ready-to-wear. We have a ready-to-wear shop.

Q. What type of garments do you sell, Miss Hertz? A. The better type only.

· Q. Desses? A. Dresses principally, suits.

Q. Dresses and suits. How long have you been engaged in the retail sale of dresses and suits? A. Well, I should say off and on about fifteen years.

Q. How long have you been engaged in the sale at your present address? A. Since the first of January this year.

Examiner Bennett: Will you speak just a little louder, if you please, so that these gentlemen can hear you also?

By Mr. Martin.

- Q. Now, Miss Hertz, where were you located prior to January the 1st? A. Well, I had been out of business, for a few years, and before that I was on Delaware Place, 105 East Delaware Place.
- Q. When you were at Delaware Place, were you engaged in the sale of dresses and suits there? A. Yes, uh huh.

9587

- Q. How long had you been there? A. About three and a half years.
- Q. Now, at your present location, was that a ground floor store? A. That is an apartment, first apartment in the building, a large court building, a U-shaped court.
- Q. Do you live and conduct business from the same apartment? A. No; we use this apartment solely for business.
- Q. Do you do the buying for your business? A. Yes. Both Mrs. Lang and I do, but I do most of it.
 - Q. You and Mrs. Lang are in partnership? A. Yes.
- Q. How long have been doing the buying? A. Well, ever since I have first been in business, almost fifteen years.

- Q. In what markets do you buy? A. New York market principally and the better class of merchandise.
- Q. Do you use any other market? A. We use Chicago market to some extent.
- Q. What price lines do you carry, cost price lines? A. \$16.75 up.
- Q. \$16.75 up? A. In the summer it runs from \$10.75, up.
- Q. Will you name some of your sources of supply in New York? A. Well, Sportcraft. We depended on for the greatest amount of merchandise.

Q. Any others? A. Lenkowsky, Modes.

Mr. Albert: What was that third.

The Witness: Lenkowsky, Modes. And then the other people, Jerry Dress, and a few others were not Guild houses, Nathanson Company are not Guild.

By Mr. Martin.

- Q. Who is that last one? A. Nathanson Dress. That is an evening dress house. Then we have been refused merchandise—
- Q. No. Now, I will get to that later. Those are the ones that you have done business with? A. Yes, uh huh.

Q. Now, Miss Hertz, have you ever heard of the Fashion Originators Guild of America? A. Yes, we have.

- Q. When did you first hear of them? A. Well, I think I heard of them right after I went out of business, when they were first organized.
 - Q. Can you fix the time? A. I would say about 1932.
- Q. When did you go back into business? A. In the past January, 1936.
- Q. You have been out, you say, for three years? A. I have been out four, about four years.
- Q. When you went back into business on January 3rd, of this year, who were your main sources of supply? A. Sportcraft, Lenkowsky and Jerry Dress Company, Nathanson. Sportcraft and Nathanson were our largest accounts.

Q. Have you ever signed a declaration of co-operation with the Fashion Originators Guild? A. We have, yes.

- Q. Do you recall when you signed that, Miss Hertz? A. That was around the middle of December.
 - Q. Of last year? A. Last December.
- Q. Have you ever heard of the Michigan Avenue Guild? A. I have. Since I have been in business, yes.

590

- Q. Are you a member of that organization? A. No. we are not .-
- Q. Did you ever make application for membership? We did.
- Q. Do you recall when you made application? A. That was about the last week in December.

Examiner Bennett: 1935? The Witness: Yes.

By Mr. Martin.

Q. Was your application accepted? A. No, it was not.

- Q. Did they give you any reason for refusing your application? A. They apparently accepted the first and then told us that when the meeting was called for the third of January they would pass on it, and then Mr. Fletcher foretold before that time that we would not be admitted. I had taken him through this apartment when we made application and told him that we had not signed our lease there, and he made no comment except that it was a cute place. I showed him that it was not fitted upfor living, and he made no comment except that it was a very nice place. And a week or two later he prophesized that we would not be admitted because of the restricted location.
- · Q. Were you ever formally notified by the Guild, by the Michigan Avenue Guild, that your membership-that your application was not accepted? A. No, we were not. 9594
 - Q. Did you ever receive any notice from any source that you - A. Just from New York, various New York manufacturers.
 - . Q. Since that time, Miss Hertz, since the first of the year have you made any effort to-strike that out. After you signed the declaration of co-operation with the Fashion Originators Guild, did you co-operate with them? A. In every way, yes.

- Q. Did you place the Guild stamp on your orders? A. We did.
 - Q. Did they shop your store? A. Apparently not.
- Q. Were you ever requested to return any garments as being copies? A. No, no.
- Q. Now, Miss Hertz, do you recall when you first were refused garments by a Guild house? A. Well, the first that we knew of it, we were refused the last part of February, we were refused an order which had been placed and accepted.
 - Q. Who refused you? A. Sportcraft.
- Q. Did they give you any reason for not? A. No. They just never answered a letter until their salesman came here.
- Q. Did you ever have any correspondence with Sportcraft relative to shipping you any goods? A. No, they did not answer. I just delivered our ultimatum to them, but they never answered.

Mr. Martin: Mark this for identification Commission's Exhibit 743.

(The document referred to was marked Commission's Exhibit 743 for Identification.)

By Mr. Martin.

- Q. I hand you Commission's Exhibit No. 743 for Identification and ask can you identify that paper? A. Yes.
 - Q. What is it? A. This is when they-

Q. Don't say what it states, but just say what it is. It is a letter from who to who? A. It is a letter from Sportcraft to our firm, advising us—

- Q. Don't say that. What date is it? A. January 15, 1936.
- Q. Was this letter received by you in the mails? A. It was.

Florence W. Hertz-For Commission-Direct.

Mr. Martin: I offer it in evidence, if the Examiner please.

Mr. Albert: Objected to, may it please the Court, as in no manner binding upon the Fashion Originators Guild of America, no proper foundation laid with respect to the authority of anyone to send such a letter, in regard to the substance thereof, and the condition thereto; upon the further ground that the letter is not signed.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

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(The document referred to, heretofore marked for Identification Commission's Exhibit 743, was received in evidence.)

-By Mr. Martin.

Q. Since the date of this letter, which is Commission's Exhibit No. 743, dated January 15, 1936, have you ever had any orders filled by Sportcraft? A. We have, yes, many of them.

Q. Since the date of this letter? A. Since that date, yes.

Q. When were they filled? A. They were filled up unto February 28th.

Q. But no orders have been filled since? A. From that date on, February 28th, they refused.

9600 Q. Did they give you any reason for not filling them?
A. Not in writing.

Q. Did they give you any oral reasons? A. Yes, sir; their representative.

Mr. Albert: That is objected to, may it please the Court. The answer is "yes" or "no."

By Mr. Martin.

Q. Who gave you any information? A. The local representative.

Mr. Albert: That is objected to, may it please the Court, as a conclusion of the witness. I think the question calls for the name of the party.

By Mr. Martin.

Q. Who is their local representative? A: Mr. Kornicker is their man, their salesman, who comes here, their traveling salesman.

Q. What did he tell you?

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Mr. Albert: That is objected to, if the Examiner please, as not binding upon the Fashion Originators Guild of America, and no proper foundation laid as to the authority of this man to make any statement whatsoever.

Examiner Bennett: Overruled.

By Mr. Martin.

Q. What did he tell you? A. He told us that the local Guild, the Michigan Avenue Guild, were actively engaged in preventing their selling to us. That he had got in touch with this Guild, and told them that we were playing the rules of the game in all respects, but that, on account of our location being in a residential neighborhood, they refused to allow the Guild people to sell us.

- Q. Since that time, have any other Guild manufacturers refused to sell you? A. Yes.
 - Q. Who? A. Lenkowski Modes.
 - Q. Any others? A. International Dress Company.
- Q. Any others? A. Well, the others were really hardly refusals. We just wrote, making inquiries.

- Q. Did you place any orders with Lenkowski? A. We did, yes.
 - Q. They were not shipped? A. Not shipped, no.
- Q. Did they give you any reason for refusing to ship them? A. They merely wrote that, being members.

Mr. Albert: That is objected to, may it please the Court. The letter is the best evidence.

By Mr. Martin.

Q. Have you that letter? A. I haven't it with me. I have the letter, yes.

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- Q. Can you bring it down to-morrow morning? A. Can I send it? It is very difficult for me to get down. I get up out of bed at noon, I have been very ill; but, if necessary, I could bring it in the afternoon.
- Q. Did you place any orders with the International Dress Company? A. We tried to, yes.
- Q. What did they tell you? A. Being Guild members—

Mr. Albert: That is objected to, in no way binding upon the Fashion Originators Guild of America and no proper foundation laid.

Examiner Bennett: Objection overruled; it is preliminary. She has not said they were not filled.

9606

By Mr. Martin.

- Q. Did they accept the order? A. They accepted the order.
- Q Did they fill it? A. They did not.
- Q. Did they give you any reason? A: That we are not members.
- Q. Who did you talk to in the International Dress Company? A. Louis Cohen, their local representative.

- Q. What did he tell you? A. He said we were not members of the Michigan Avenue Guild, they could not sell us.
- Q. Did any others refuse? A. No. We tried no more Guild houses after that.
- Q. Have you made any further efforts to join the Michigan Avenue Guild? A. No, I don't believe that we would join them.
- Q. Did the Fashion Originators Guild ever return your declaration of co-operation? A. No. We received their stamp, we have their stamp and their letter admitting us.
- Q. Now, Mrs. Hertz, have you been able to replace the Guild manufacturers with whom you formerly did business? A. We have not.

9608

Mr. Albert: That is objected to as leading, and calling for the conclusion of the witness; also, no proper foundation has been laid.

Examiner Bennett: I will overrule the objection. You may answer.

By Mr. Martin.

- Q. You may answer. A. No, we have not been able to replace such merchandise as we depended upon the Guild for.
- Q. Have you formed any opinion as to the effect on your business of your inability to get Guild merchandise? A. We have learned very decisively that it has cost us, as far \$\infty\$609 as we know, \$1700 in being unable to fill our orders that were placed.
- Q. Will you explain that more particularly, please? A. We had placed a large order with the Sportcraft, and also a large order—not a large order, but a substantial order, with Lenkowski, for the early spring merchandise. Naturally, we let our customers know that we had this merchandise coming in, and we did not receive it. Then, we

placed special orders on merchandise that we already had, which were not filled and, in consequence, we lost entire orders; in one instance we lost an entire trousseau from an old and wealthy customer. And we lost three orders from another customer who had bought Sportcraft merchandise, they wired us, thanking us, and told us they

would make a special effort to give us the merchandise within one week. We did not receive the merchandise and no answer to any wires or letters after that.

Q. Have you done your fall buying yet? A. No, we have not been able to.

Q. Why? A. We have not been able to get the merof chandise. If I were able to go to New York, and scout around for a week, I might be able to find some other houses to take their place; but, in the meantime, we have not been able to.

Mr. Martin: That's all.

Mr. Marshall: If the Court please, I will cross-examine this witness now on behalf of the Michigan Avenue Guild of Chicago.

Cross-examination by Mr. Marshall.

- Q. Did you make the statement that you would not join the Michigan Avenue Guild now? A. I think that is correct, yes.
- Q. 1111 Hyde Park Boulevard, was that the place of your residence at the time you made your application for membership in Michigan Avenue Guild? A. Residence, yes.
 - Q. Is that the place from which you conducted your business? A. No.
 - Q. Where did you conduct your business from? A. 1113 Hyde Park Boulevard.
 - Q. 1113 Hyde Park? A. Yes.

9614 .

- Q. Is that the same building? A. Same building, yes.
- Q. How many apartments in the building?

Mr. Martin: I object, as irrelevant and immaterial.

Mr. Marshall: This, if the Court please, presents the same issue as presented with respect to the preceding witness. We intend to bring out the same facts with respect to this witness.

Examiner Bennett: Do you want to try to prove that she did live in that apartment from which she did business?

Mr. Marshall: That she was selling from an apartment, and that the rules prohibited it.

Examiner Bennett: That is in the record. What else do you want?

Mr. Marshall: Well, I want to show that it was an apartment building.

Mr. Martin: She has testified to that.

Examiner Bennett: I will let her answer. Objection overruled.

Mr. Martin: Read the question. (Question read by the reporter.)

Mr. Martin: If you know.

A. I should fay in the neighborhood of between thirty-six and forty.

By Mr. Marshall.

- Q. Are there any stores in the building? A. Not right now.
- Q. At that time you filed your application, were there any, at the time you made your application? A. I am not certain whether the one that had been there had gone out or not. That also was in an apartment.
- Q. Are there any stores in the building, that was my question. A. No. There never have been.

Q. At the time you signed your application for membership in the Michigan Avenue Guild, you had a conversation with Mr. Fletcher, did you not? A. Yes.

Q: Isn't it a fact that at that time Mr. Fletcher went over the rules of the Michigan Avenue Guild with you? At Well, he read them off so rapidly that we could hardly

pay attention to most of them.

Q. Did you understand, or did you not understand that there was a rule to the effect that no member could sell merchandise except from regular retail premises, and not sell from a private apartment? A. No, no. I took Mr. Fletcher through that apartment before we signed the lease.

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- Q. Did he tell you he would take your application, but that it would be subject to the action of the board of directors of the Michigan Avenue Guild? A. Not then, not at that time, no.
- Q. He did not tell you that at the time he took your application? A. No. I had occasion to call him up a few days after, when he told me that.

Q. Did you ask him why he wanted to see the apart-

ment? A. No; I wanted to show it to him.

- Q. What was the purpose of showing him the apartment? A. Well, Mrs. Lang's brother was one of the originators of the Fashion Guild in New York.
- Q. Yes. A. And he told us that we were within our rights to take an apartment provided no one lived there. He suggested that we do that, so before we signed the lease we thought that—

Q. What was his name? A. Stanley Brown.

Q. Stanley Brown? A. Stanley Brown was formerly of Brown Brothers.

Mr. Martin: Go ahead and finish your answer. The Witness: We took Mr. Fletcher through on our own accord.

Mr. Martin: Go ahead.

The Witness: We wanted to prove to him—we wanted to prove to him that there were no living facilities, so I asked him if he would like to come through and see the apartment. He did not ask to see it. I offered to show it to him.

By Mr. Marshall.

- Q. Was it fitted up like an ordinary apartment? Did it have a stove in it? A. In the kitchen, yes.
 - Q. Bathroom? A. Yes, naturally.
 - Q. Kitchen? A. Naturally, yes.
- Q. Isn't it a fact that Mr. Fletcher told you your application would have to be passed upon by the board? A. 9620 When I called him up a few days later, yes.

Q. At the time isn't it a fact that you had not yet signed your lease, but merely had an option on your lease? A. When I took him through, yes.

- Q. Yes. Did you understand that your application was accepted then and there? A. We really didn't think anything about it. We thought as long as we were members of the New York Guild, naturally we were automatically members of this Guild.
- Q. Did you know that there were rules of the Michigan Avenue Guild? A. No, never had heard of the Michigan Avenue Guild.
- Q. Well, you signed an application for membership in the Michigan Avenue Guild? A. At that time. Yes, up to this time I never had heard of the Michigan Avenue Guild.

Q. When you signed your application, were you interested in knowing whether they had any rules? A. We presumed that they were the same rules as the Fashion.

Q. Fashion Originator's Guild? A. Style piracy, price cutting; premature sales, such things.

Q. What did Mr. Lang tell you with respect to this apartment and membership when you talked to him? A. Mr. Brown?

Q. Mr. Brown A. Well, he advised as to take an apartment.

Q. Did he suggest your calling Mr. Fletcher out there? A. I don't think Mr. Brown knew anything about the Michigan Avenue Guild either. That was not formed at the same time; was it, Fashion Originators?

Q. Do you know why he would suggest an apartment without any living quarters?

Mr. Martin: Objected to.

Examiner Bennett: I will let her answer.

Mr. Martin: All right. Go ahead.

The Witness: He didn't suggest that.

Examiner Bennett: Read the question.

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- Q. (The question was read.) A. That wasn't Mr. Brown's suggestion. I knew that the Fashion Originators Guild would not permit anyone to do business from the same place that they lived.
- Q. You knew that the Fashion Originators Guild would not permit that? A. In a dwelling, oh, yes.
- Q. What did you base that information on, or that impression on? A. Why, it wasn't an impression; it was a fact that we obtained from Mr. Cornicker when we came down to buy—do our first buying.
- Q. Do you know as a fact that there is no such rule of the Fashion Originators Guild? A. No, I really don't.

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Q. Who gave you this information? A. Mr. Cornicker.

Q. Mr. Cornicker? A. Mr. Cornicker.

- Q. Who is he? A. Mr. Cornicker is the salesman for the Sportcraft, Incorporated.
 - Q. Of New York? A. Yes.
 - Q. You relied on his information? A. Naturally.
- Q. As to what the rules of the Michigan Avenue Guild were? A. Oh, Michigan Avenue Guild. We didn't know anything about the Michigan Avenue Guild until we got a letter from New York telling us to join them.

- Q. When you filed your application for membership in the Michigan Avenue Guild and gave it to Mr. Fletcher— A. Yes.
- Q.—you then knew that you were seeking membership in a Chicago organization; did you not? A. Yes, uh huh.
- Q. You say you were not concerned about their rules? A. Well, not to the extent of the way he rattled them off, no. We were refused to copy, and naturally when refused to copy, we weren't especially interested in what the rules were. We thought it was automatically the same as the Fashion Originators Guild.
- Q. There was some question in your mind as to whether or not it would be— A. Only from——
- Q. Satisfactory? A. Conducting business from a dwelling, yes.
- Q. So it was furnished as a dwelling at the time; was it not? A. No; it wasn't furnished at all at the time.
- Q. It was equipped as a dwelling? A. No. It was a dwelling but it was laid out as a dwelling, no furnishings in it at the time we showed it to him. It was just the bare apartment.
- Q. Did you know at the time that that district was zoned for apartments only? A. No.

Mr. Martin: Don't answer. Objected to, your Honor, irrelevant.

Examiner Bennett: I will let her answer that one question.

The Witness: No, we did not.

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By Mr. Marshall.

Q. Did you ever make inquiry as to whether you had the right to conduct the sale of merchandise from that apartment under the Chicago zoning ordinance?

> Mr. Martin: Just a second. Objected to. Examiner Bennett: I will sustain an objection to that.

Mr. Marshall: We should like to make a proffer, if she were permitted to answer she would testify that she did know.

Examiner Bennett: All right.

Mr. Martin: Move that the offer be stricken.

Examiner Bennett: There is no basis for that offer of proof. I strike it, without probable basis of fact.

Mr. Marshall: The reason we present the question, if the Court please, is because we assume that one who engages in business in the city—

Examiner Bennett: Her answers would indicate that she had no such knowledge.

9629

By Mr. Marshall.

Q. How long after your first meeting with Mr. Fletcher were you advised that your application could not be accepted by the Michigan Avenue Guild? A. I should say about a week later.

Q. A week later. That is the only application that you made for membership? A. Naturally.

Q. Are you selling merchandise from that apartment now? A. We are.

Q. Continuously since the time of your application? A. We have.

9630

Mr. Marshall: That will be all for the Michigan Avenue Guild, if the Court please.

Mr. Albert: No questions.

Mr. Martin: That is all, Miss Hertz.

Mr. Marshall: If the Court please, I wonder if

I could ask one more question?

Examiner Bennett: Yes, sure.

9631

By Mr. Marshall.

Q. Did you have a retailer's license?

Mr. Martin: Objected to. Pon't answer. relevant and immaterial, your Honor.

Examiner Bennett: I will sustain the objection.

Mr. Marshall: Exception. I desire to make an offer of proof, if the Court please, if she were permitted to answer her testimony would be that she did not have.

Mr. Martin: Move that the offer be stricken.

Examine: Bennett: It may be stricken as irrelevant. Anything further?

Mr. Marshall: That will be all, Judge.

Mr. Martin: That is all, Miss Hertz. very much for coming down.

(Witness excused.)

9632

EDWARD A. FLETCHER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you please state your name, full name and residence, Mr. Fletcher? A. Edward A. Fletcher, F-l-e-t-c-h-e-r.

- Q. Where do you live? A. 529 Wellington Avenue, Chicago.
- Q. What is your occupation, Mr. Fletcher? A. Secretary of the Michigan Avenue Guild.
- Q. What is the Michigan Avenue Guild, Mr. Fletcher? A. A trade association.
 - Q. Composed of? A. In what respect?

- Q. Well, who goes to make up the membership, not the names but the types of business? A. Retailers of the ready-to-wear industry in the city of Chicago.
- Q. When was the Michigan Avenue Guild organized? A. Approximately 1932 or '33 some time.
- Q. Can you recall it any more definitely as to months? A. Well, I was not connected with the Guild at its original inception.
- Q. Would you say the last part of '32 or the— A. Some time in '32.
- Q. How long have you been secretary of the Michigan Avenue Guild? A. About July or so, 1933.
- Q. Is the Michigan Avenue Guild a corporation? A. Yes, sir.
 - Q. Chartered under what laws? A. The laws of the state of Illinois.
 - Q. How is the Guila governed? A. It is governed by a board of directors.
 - Q. How is that board of directors chosen? A. From the membership.
 - Q. In what manner? A. By a vote.
 - Q. A vote of whom, the members? A. Vote of the members.
 - Q. Does the Michigan Avenue Guild have any other officers than you as secretary? A. We have an attorney, counsel.
- Q. Who is your counsel? A. Mr. Alexander H. Marshall.
 - Q. Do you have a president? A. Yes, sir.
 - Q. Who is the president? A. Mr. Guy Eiderheimer, Sr., E-i-d-e-r-h-e-i-m-e-r.
 - Q. Do you have any other officers, vice-president, treasurer? A. Vice-president is Mr. Frank L. Cole, C-o-l-e.
 - Q. How about your treasurer? A. Treasurer is Mr. Lawrence R. Pearson, P-e-a-r-s-o-n.

- Q. Who composes the board of governors? board of governors at the present is composed of Mr. Eiderheimer, Mr. Cole, Mr. Harry Blum, Mr. Leo Bramson, Mr. Greenbaum, Mr. Lindbergh, Mr. Leavitt, Miss Gosseit.
- Q. Miss who? A. Miss Gossert, G-o-s-s-e-r-t, and Mr. Rose.
 - Q. Rose? A. Rose, R-o-s-e. That is nine, is it?
- Q. Yes, sir. What are the purposes of the Michigan Avenue Guild?

Mr. Albert: That is objected to, if it please the Court, as being irrelevant, immaterial, outside of the scope of the Federal Trade Commission's com- 9638 plaint, which can have jurisdiction solely over interstate matters, and the purposes of the Michigan Avenue Guild as a local organization are something which are beyond the scope entirely of the Commission's investigation, and on behalf of the Michigan Avenue Guild, in the absence of counsel for the Michigan Avenue Guild I wish to make an objection on his behalf.

Examiner Bennett: Have you a certificate of incorporation?

The Witness: Yes, sir.

Mr. Martin: Have you one with you, Mr. Fletcher?

The Witness: No, sir. I think it was delivered to Mr. Nevein. It is incorporated in the State of Illinois not for profit.

Examiner Bennett: It is not in evidence?

Mr. Martin: No, sir, I don't think it is in evidence.

By Mr. Martin.

Q. You say you have not a copy of it with you? A. No,

- Q. Have you a copy which you can produce to morrow?

 A. I presume our attorney has.
- Q. I ask you at this time, if you will, if it is available, produce that to-morrow. A. Yes, sir. The certificate of incorporation?
 - Q. Yes, as to the purposes.

Examiner Bennett: Well, if there is no question raised as to the best evidence, you may go ahead.

- Mr. Albert: I am afraid I must raise the objection, your Honor, that the best evidence is the certificate of incorporation.

Examiner Bennett: Yes, I know it is. I say, if that question is not raised, I will let him go ahead. If it is, I don't see how he can.

Mr. Albert: May we be off the record for a moment, your Honor?

Examiner Bennett: Yes.

(There was a discussion off the record.)

By Mr. Martin. .

Q. Has the Michigan Avenue Guild adopted any bylaws? A. Yes, sir.

Mr. Martin: Will you mark these for identification, please, Commission's Exhibits 744-A to K?

By Mr. Martin.

Q. I hand you Commission's Exhibits 744-A to K for Identification and ask you can you identify that, Mr. Fletcher? A. Yes.

Q. What is it? A. It is the by-laws of the Michigan Avenue Guild of Chicago.

By Mr. Albert.

Q. Up to what date? A. The by-laws were amended and brought up to date, I think shortly before the first of this year.

By Mr. Martin.

Q. Does Commission's Exhibit 744-A to K contain the amendments? In other words, are they the by-laws which are in effect at this time? A. May I consult some references that I have in my brief case, for comparison?

Mr. Martin: Yes. Off the record.

(There was a discussion off the record.)

By Mr. Martin.

Q. Have you a complete set, up to date, with you? A. Yes.

Mr. Martin: Suppose we just mark those, in place of the ones that have been marked Commission's Exhibits 744-A to K, suppose we mark these, in their stead, Commission's Exhibits 744-A to H for Identification?

Examiner Bennett: Very well.

(The documents referred to were marked Commission's Exhibits 744-A to H, respectively, for Identification.)

Mr. Martin: I offer this in evidence as Commission's Exhibite 744-A to H, being the by-laws of the Michigan Avenue Guild of Chicago, as adopted March 2nd, 1933, and amended November 7th, 1933, October 24th, 1934 and December 17th, 1935 and as being the by-laws now in effect.

Mr. Albert: That is objected to, may it please the Court, upon the part of the Michigan Avenue Guild as being immaterial and irrelevant; as being incompetent to the issues of the complaint of the Federal Trade Commission, it concerning purely a local organization, intrastate in character. The same objection on the part of the Fashion Originators Guild.

Examiner Bennett: Yes. Overruled, and the document is received.

(The document referred to, heretofore marked for identification Commission's Exhibits 744-A to H, respectively, was received in evidence.)

Mr. Martin: I will ask this be marked for identification Commission's Exhibit No.\ 745.

Examiner Bennett: One sheet?

Mr. Martin: Yes.

(The document referred to was marked Commission's Exhibit 745 for Identification.)

Mr. Martin: I will ask that this document be marked Commission's Exhibit 746-A and B for Identification.

(The document referred to was marked Commission's Exhibits 746-A and B for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 745 for Identification and ask you can you identify that? A. Yes, sir.

Q. What is it? A. It is a list of the officers, board of directors, advisory board, executive committee, publicity and advertising, arbitration committee, wholesalers' relationship committee, State Street contact committee, of the Michigan Avenue Guild.

Q. For what year? A. For the year 1936.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibit No. 745.

Mr. Albert: Objected to, on the part of the Michigan Avenue Guild and the Fashion Originators Guild, as being immaterial and irrelevant.

Examiner Bennett: Overruled. Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 745, was received in evidence.)

By Mr. Martin.

- Q. I hand you Commission's Exhibit No. 746-A and B and ask you can you identify that? A. Yes, sir.
- Q. What is it? A. A list of the rules and regulations of the Michigan Avenue Guild.
- Q. In effect as of what date? A. In effect as of the present date.

Mr. Martin: I offer this in evidence as Commission's Exhibit 746-A and B.

9650

Mr. Albert: Objected to, may it please the Court, on the part of the Michigan Ayenue Guild and the Fashion Originators Guild, as being immaterial and irrelevant, and as being incompetent, in that it concerns matters not within the scope of the Commission's complaint, nor within the jurisdiction of the Federal Trade Commission, being confined to matters solely intrastate in character, and of local origin and inception and, in addition, that it is in no manner binding upon the Fashion Originators Guild.

Examiner Bennett: Overruled. It is received as Commission's Exhibit No. 746-A and B.

Mr. Albert: Exception.

9651

(The document referred to, heretofore marked for identification Commission's Exhibits 746-A and B, was received in evidence.)

By Mr. Martin.

Q. Now, Mr. Fletcher, are any meetings of the Michigan Avenue Guild ever held and, if so, when? A. Meetings are held from time to time upon executive call, of the president, or any ten members of the organization.

Q. Are written records of these meetings kept? A. Yes.

Mr. Martin: I will ask that this be marked Commission's Exhibit 747-A to E, inclusive, for Identification.

(The document referred to was marked Commission's Exhibits 747-A to E, inclusive, for Identification.)

Mr. Martin: And I ask that these also be marked for identification Commission's Exhibit 748-A and B.

9653

(The document referred to was marked Commission's Exhibits 748-A and B for Identification.)

Mr. Martin: I ask that these documents be marked for identification, with the proper sub-letterings where necessary, Commission's Exhibits Nos. 749 to \$15.

(The documents referred to were marked Commission's Exhibits Nos. 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, X-786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814 and \$15, inclusive, for Identification.)

9654

By Mr. Martin.

Q. Now, Mr. Fletcher, I hand you Commission's Exhibits Nos. 747-A to E, to 815-A and B for Identification, which exhibits purport to be minutes of the meetings of the Michigan Avenue Guild of Chicago held on December 17th, 1932, down to October 4th, 1935. There are also

included in these minutes various minutes of meetings of the board of directors and also of the executive committee of the Michigan Avenue Guild and various annual reports of the Sfficers of the Michigan Avenue Guild rendered to the membership at certain meetings and ask you if you can identify those as being what they purport to be. A. Does it make any difference if I separate these? That will disrupt the chronological order, but it will be all right.

Mr. Martin: No. (Short interruption.)

By Examiner Bennett.

Q. Do you know the question? A. I would like to have 9656 the question read, if you please.

Mr. Martin: Read the question to him.

Q. (Question read by the reporter.) A. I can identify minutes of meetings from February 20th, 1934 to October 4th, 1935.

By Mr. Martin.

- Q. What is that first date? A. February 20, 1934, to and including October 4, 1935.
- Q. With respect to the other exhibits, can you identify them? A. No, sir, because I was not secretary at the time those minutes were recorded.

Mr. Martin: Off the record.

(There was a discussion off the record.)

By Mr. Martin.

Q. Can you identify these exhibits which purport to be minutes of meetings, at a time when you were not secretary of the company, as being true copies of the records of the Michigan Avenue Guild, as furnished to the Federal 965.7

Trade Commission by Mr. Marshall? A. Are we going to be technical? I cannot identify these meetings. It is not my composition, it is Mr. Marshall's.

Q. Can you identify these as the papers that were furnished— A. From the minute book.

Q. (Continuing) — from the minute book of the Michigan Avenue Guild, to the Commission? A. Yes, sir.

Mr. Martin: If your Honor please, I offer these exhibits in evidence.

Mr. Albert: May it please the Court, I object particularly to the introduction into evidence of any minutes or reports of meetings of officers or committees which occurred prior to the time covered by the complaint of the Federal Trade Commission, as being irrelevant and immaterial to the proceedings.

I also object to the introduction into evidence of these reports of the proceedings of various committees of the Michigan Avenue Guild, and of the Michigan Avenue Guild itself, as being immaterial and irrelevant, and as being incompetent, in dealing with matters purely intrastate in character, which matters are outside the jurisdiction of the Federal Trade Commission, and form no part of the complaint. And I further object to the same upon the ground that no proper foundation has been laid as to connection with the Fashion Originators Guild; and, further, upon the ground that the same are not binding upon the Fashion Originators Guild.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: They will be received as Commission's Exhibits 747-A to E, to 815-A and B, inclusive.

9659

9661

(The documents referred to, heretofore marked for identification Commission's Exhibits 747-A to E, to 815-A and B, inclusive, were received in evidence.)

Mr. Albert: May we be off the record, your Honor?

(There was a discussion off the record.) .

Examiner Bennett: In view of the representations of counsel that the attorney for the Michigan Avenue Guild, who is absent, would have an especial interest in certain documents still to be presented, the Examiner will adjourn the hearing until 10.00 o'clock to-morrow morning, at this place.

9662

(Thereupon, at 4.00 o'clock P. M., the hearing in the above entitled matter was adjourned until 10 o'clock A. M., Wednesday, September 9th, 1936.)

Room 123, New Post Office Building, Chicago, Illinois, September 9th, 1936.

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: JOHN W. BENNETT, Examiner.

(SAME APPEARANCES)

PROCEEDINGS.

9663

Examiner Bennett: Be in order, please.

Mr. Martin: If your Honor please, at this time I am going to ask that Mr. Fletcher step down. I have another witness with whom I had arranged to be here the first thing this morning, and we put Mr. Fletcher on yesterday for the purpose of identifying some exhibits.

Mr. Albert: No objections, your Honor. (Witness excused:)

A. E. LEVITT was thereupon called as a witness for the Commission and, having been previously sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you state your name? A. A. E. Levitt.

By Examiner Bennett.

Q. How do you spell the last name? A. L-e-v-i-t-t.

By Mr. Martin.

9665 Q. Where do you live, Mr. Levitt? A. My hôme, you mean?

Q. Yes, sir. A. Belmont Hotel.

Q. Chicago? A. Yes.

Q. What is your occupation? A. I manage the Betty Wales Shop at 172 North Michigan Avenue.

Q. What business is the Betty Wales Shop engaged in?

A. Ladies' ready to wear.

Q. How long have you been with Betty Wales? About ten years.

Q. How long have you been manager over there?

Approximately seven years.

Q. What type of ladies' ready-to-wear does, Betty Wales sell? By that I mean dresses, suits, coats or what lines? A. Well, we cater to the medium and better-class of trade.

Q. In what garments? A. Dresses, coats, suits and furs.

Q. Medium to better class? A. Yes.

Q. What price lines? A. Well, we start cost \$10.75.

Q. And run to what? A. Well, we run to coats, \$400. Or, not cost. I would say \$275 cost.

Q. How about dresses? A. Well, we run \$10.75 to, oh, \$79.50, cost, in some instances a little higher.

- Q. Do you do the buying over there, Mr. Levitt? A. I do part of it, and we have another buyer, we have a dress buyer.
 - Q. Does your dress buyer report to you? A. Yes.

Q. Under your supervision? A. Yes.

- Q. What markets do you buy? A. New York market.
- Q. Any others? A. We do some buying here.
- Q. Have you ever heard of the Fashion Originators Guild of America? A. Yes, sir.
- Q. When did you first hear of that organization? A: When it was organized.
- Q. Do you recall when that was? A. It was back around three or four years.
- Q. Have you ever heard of the Michigan Avenue Guild? A. Yes, sir.
- Q. When did you first hear of that? A. Some three years ago.
- Q. Did you ever sign a declaration of co-operation with the Fashion Originators Guild? A. Yes,
- Q. Do you recall when you signed that? A. Well, I believe at its inception.
- Q. Can you make that any more specific? Can you give me whether it was in 1933, '34, '35, or when? A. I don't recall the dates. I would say it goes back nearly four years ago.
- Q. Have sou ever been red carded? A. No, sir.
- Q. Your declaration of co-operation is still in effect?
 A. Yes, sir.

Q. Since you have signed the declaration of co-operation with F.O.G.A., have you co-operated with them? A. Yes, we have.

Q. In what way? A. The natural ways of conducting the business. We have bought our merchandise, and sold it. We haven't had much dealings with F.O.G.A., because we have bought from our firms and sold our merchandise.

Q. Are you familiar with the Guild warranty stamp?
A. As regards copying, you mean?

9668

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Q. Yes. Do you place that stamp on your orders? A. Yes, we do, sir.

Q. Since you signed the declaration has the Guild shopper ever shopped your store? A. They have come in to make inquiries regarding copies.

Q. Has the F.O.G.A. ever requested you to return any garments on the ground that they were copies? A. The shopper has.

Q. Did you return them? A. I believe we did.

Q. What was the reason you signed the declaration of cooperation?

9671

Mr. Albert: That is objected to, if it please the Court, as immaterial, outside of the scope of the Federal Trade Commission complaint.

Examiner Bennett: Overruled.

Mr. Martin: You may answer.

Mr. Albert: Exception.

The Witness: What was the question again?

By Mr. Martin.

Q. What was the reason that you signed the declaration of co-operation with the Guild? A. We believed that it would be for the good of our business.

Q. Is that the only reason? A. That is right.

Q. No other reason?

9672

Mr. Albert: If it please the Court, does Mr. Martin insist upon the witness giving him some other reason when the witness says he has none?

Examiner Bennett: I don't suppose he will give any if he has none.

By Mr. Martin.

Q. Did you ever receive any correspondence from the Guild requesting you to sign a declaration of co-operation?

Mr. Albert: That is objected to, if it please the Court. The witness has stated that the store has signed the declaration of co-operation, and surely any correspondence received beforehand is merged in the signature of the declaration.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

Mr. Martin: Read the question.

Q. (The question was read.) A. I don't believe so.

By Mr. Martin.

Q. Did the F.O.G.A. ever advise you that unless you signed the declaration you would not be shown Guild merchandise?

> Mr. Albert: That is objected to, if it please the Court, as to form.

> Examiner Bennett: Overruled. You may an-

The Witness: What was the question again?

Mr. Martin: Read that question back.

(The question was read.)

Mr. Albert: Now, if it please the Court-

The Witness: No.

Mr. Albert: Mr. Martin, I believe, is referring to the letter which has been in evidence all of this 9675 time. The only purpose of this question is to see if the witness remembers the letter, and then he is going to show him the letter and ask him if he I ask that if Mr. Martin has such a letter he show it to him immediately and ask him if he received such a letter.

Mr. Martin: I would suggest that Mr. Albert seems to be a mind reader this morning.

9676

A. E. Levitt-For Commission—Direct. Edward A. Fletcher-For Commission—Direct.

Mr. Albert: I say, "If you have such a letter." We can save some time at this stage of the game. I think we are all interested in completing the hearings as soon as possible.

By Mr. Martin.

Q. Have any Guild manufacturers ever refused to sell you any garments? A. No.

Q. Did you ever buy anything from Ben Gershel? A. Ben Gershel?

Q. Yes. A. Yes, occasionally.

9677

- Q. Did Ben Gershel ever refuse to sell you any merchandise? A. Not that I remember of
- Q. Do you remember a Commission attorney, Mr. Evans, interviewing you?

Mr. Afbert: That is objected to, if it please the Court, as immaterial and irrelevant.

The Witness: Yes.

Examiner Bennett: Overruled. He may answer.

Mr. Albert: Exception.

Mr. Martin: Will you resume the stand, please, Mr. Fletcher?

9678

EDWARD A. FLETCHER thereupon resumed the stand as a witness for the Commission and, having previously been sworn, testified further as follows:

Direct examination by Mr. Martin (continued).

Q. Now, Mr. Fletcher, what are the purposes or objects of the Michigan Avenue Guild?

Mr. Albert: As contained in the charter, you mean, Mr. Martin?

Mr. Martin: Yes.

The Witness: As contained in the charter?

By Mr. Martin.

Q. Yes. A. A corporation, incorporated not for profit, of the State of Illinois, to advance the trade interests of its, members: It is to maintain merchandising, advertising policies and standards in the retail wearing apparel trade, from its customs and usages to advance trade and commercial interests of its members.

Q. How many members are there of the Michigan Ave: 9680

nue Guild? A. Approximately eighty.

Q. Have you a list of those members?. A. Not avail-

able, at the present time. I have a list.

Q. Can you procure such information and bring it in this afternoon? A. I doubt whether I could get that this afternoon or not, because my office girl is away.

Q. Could you produce a list of the members to-morrow?

A. Yes, sir.

Q. Will you do so? A. Yes, sir.

Q. As Secretary of the Michigan Avenue Guild, Mr. Fletcher, do you communicate with the members of the Michigan Avenue Guild relative to the affairs of the Guild? A. Yes, sir.

> Mr. Martin: I will ask that these documents be marked for identification Commission's Exhibits '816, 817, 818, 819, 820-A and B, 821, 822, 823, 824, 825 and 826.

> (The documents referred to were marked Commission's Exhibits 816, 817, 818, 819, 820-A and B, 821, 822, 823, 824, 825 and 826 for Identification.)

9683

By Mr. Martin.

Q. Now, Mr. Fletcher, I hand you Commission's Exhibits No. 816 to 825, inclusive, for Identification and ask fram you identify those papers?

(A short pause.)
The Witness: The question, please?

Q. (The question was read.) A. I can.

By Mr. Martin.

Q. What are they? A. Separate identifications for each one?

Q. No, they are all practically the same. A. Correspondence, letters of general information to the members of the Michigan Avenue Guild.

Mr. Albert: Those are mimeographed forms?
The Witness: Mimeographed forms, form letters.

Examiner Bennett: Sent by whom?

By Mr. Martin.

Q. Were those letters sent by the Michigan Avenue Guild to its members? A. Yes, sir.

Mr. Martin: I offer these in evidence."

Mr. Albert: Objected to, if it please the Court, upon the ground that they concern matters, transactions and policies which are purely local in character as between the Michigan Avenue Guild and its members, and in no manner binding upon the Fashion Originators Guild, nor the possible subjects of investigation or complaint by the Federal

Trade Commission, as not being within the jurisdiction of the Federal Trade Commission, concern-

ing, as they do, solely matters which are intrastate in character.

Mr. Marshall: The Michigan Avenue Guildjoins in the objection, if the Court please, on the same ground.

Examiner Bennett: I want to see them.

(The paper writings referred to were handed to the Examiner.)

Examiner Bennett: The objections are over-

Mr. Albert: Exception.

Examiner Bennett: —documents are received in evidence.

Mr. Marshall: Exception on behalf of the Michigan Avenue Guild. (A)

(The papers referred to, heretofore marked for identification Commission's Exhibits 816 through 825, inclusive, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Fletcher, referring to Commission's Exhibit No.—no, I will withdraw that question at the present time. Are you familiar with an organization known as the State Street council? A. I know of its existence.

Q. Have you ever had any correspondence with the State Street council relative to co-operation? A. Along what lines?

Q. Co-operation in considering local problems.

Mr. Albert: That is objected to as entirely irrelevant and immaterial, as to what local problems anybody may be engaged in, in the State of Illinois.

Mr. Marshall: Same objection.

Examiner Bennett: I will overrule the objection at this time and let him answer.

Mr. Martin: Read the question.

9686

Q. (Question read by the reporter.) A. Yes.

By Mr. Martin.

Q. I hand you Commission's Exhibit for Identification No. 826 and ask you can you identify that letter? A. Yes.

Q. What is it? A. It'is a letter from me to the secretary of the State Street Council, dated September 10, 1935.

Mr. Martin: I offer it in evidence as Commission's Exhibit No. 826.

Mr. Albert: The same objection as previously, your Honor.

Mr. Marshall: Same objection on behalf of the Michigan Avenue Guild.

Examiner Bennett: You said it was a foundation offer. It seems to be purely, as the face of it indicates, a local problem. They speak of local manufacturers and no others.

Mr. Martin: If your Honor please, it refers to the practice also of the local guild regulations with regard to apartment houses.

Examiner Bennett: Yes. That is local, so far as that indicates.

Mr. Martin: If your Honor please, I respectfully ask that while apartment houses are local propositions, this Michigan Avenue Guild has a contract, which is in evidence, with the Fashion Originators Guild, by the terms of which contract the Fashion Originators Guild will not sell merchants who are not members of the Michigan Avenue Guild.

Mr. Albert: Now, if your Honor pleases, may we have an indication of the particular paragraph in the agreement to which Mr. Martin refers, and which he is paraphrasing?

9689

Examiner Bennett: If you want to confine your offer to that particular thing, co-operation as to apartment house sales, in interstate commerce—

Mr. Martin: That is what it is offered for.

Examiner Bennett: If that is the purpose, all right. I do think that it is generally inadmissible.

Mr. Martin (indicating): Paragraph One.

Mr. Albert: If it please the Court, may I ask that Mr. Martin not sum up with respect to the meaning of various agreements, and I think that we can both best interpret or attempt to interpret that agreement at the proper time. I don't think that this is the proper time to attempt to do it.

Mr. Martin: That is the purpose of it.

Mr. Albert: Suffice it to say, your Honor, that we heartily disagree with Mr. Martin's attempted paraphrasing of these agreements.

Mr. Martin: You disagree with your own handiwork?

Mr. Albert: Your interpretation isn't our handiwork. That is the hand of Jacob but the voice of Esau.

Examiner Bennett: Well, that is my offer, if you want to submit it for that particular purpose—

Mr. Martin: That is perfectly satisfactory to me, sir.

Examiner Bennett: All right.

Mr. Albert: Exception.

Mr. Marshall: Exception.

(The papers referred to, heretofore marked for identification Commission's Exhibit 826, was received in evidence.)

9692

By Mr. Martin.

Q. Now, referring, Mr. Fletcher, to Commission's Exhibit No. 826, the last paragraph, which reads: "Guild has appointed a committee to consider these problems and invites the co-operation of a similar committee from your organization." Did these committees ever have a meeting?

Mr. Albert: Objected to, if it please the Court, as immaterial and not binding upon the respondent F.O.G.A. concerning, as it does, solely local matters of intrastate character, outside of the jurisdiction of the Federal Trade Commission and not within the complaint.

Mr. Marshall: The same objection. May I add, if the Court please, that there is no foundation laid as to show the State Street Council is in any wise a party to the understanding or arrangement of any kind with F.O.G.A.

Examiner Bennett: I will let him answer. Overruled.

Mr. Albert: Exception.

Mr. Marshall: Exception.

The Witness: The question, please?

(The question was read.) .

The Witness: The committee was appointed.

Mr. Martin: Mark that for identification.

(The paper referred to was marked Commission's Exhibit 827 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 827 for Identification and ask, can you identify that? A. Yes.

Q. What is it? A. It is a letter from me to Mr. Leo Bramson, dated October 7th, 1935.

9695

Q. That letter referred to the committee which you just testified was— A. Referred to the Guild committee, yes, sir.

(The paper referred to, as Commission's Exhibit 827 for Identification, was handed to Mr. Albert Post.)

Mr. Martin: I offer it in evidence.

Mr. Albert: Now, if it please the Court, I object to Commission's Exhibit 827, upon all the grounds previously urged with respect to this type of communication; and, further, upon the ground that Commission's Exhibit 826 was admitted upon the limited ground, I believe, as attempting to show a tie-up on the question of apartment house selling.

Examiner Bennett: Well, I will sustain the objection to that. You need not finish your statements

Mr. Albert: Thank you, your Honor.

Mr. Martin: Mark this for identification Commission's Exhibit 828.

(The document referred to was marked Commission's Exhibit 828 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 828 for Identification and ask you, can you identify that? A. Yes, sir.

Q. What is it? A. It is a list of manufacturers of dresses, coats, juniors' and knitwear.

Q. Was that letter sent to the members of the Michigan Avenue Guild? A. Frankly, it is not my style of composition, I cannot say, "yes" or "no."

(There was a discussion off the record.)

Mr. Martin: If your Honor please I am advised by counsel for the respondent, that Commission's 9698

Exhibit No. 828 for Identification, which I just of fered in evidence, is already in evidence as Commission's Exhibit No. 88.

Mr. Albert: Here it is.

Mr. Martin: Yes. I, therefore, withdraw the offer of Commission's Exhibit No. 828.

By Mr. Martin.

Q. Now, Mr. Fletcher, has the Michigan Avenue Guild of Chicago ever entered into an agreement of any kind with the Fashion Originators Guild of America?

9701

Mr. Albert: That is objected to, if it please the Court, as most indefinite, and calling for a conclusion. Whether or not something is in an agreement is a proposition and question of law, not a fact for the witness to determine.

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 5 and ask you to refresh your recollection by reading that.

Mr. Albert: I do not quite understand it. I think Commission's Exhibit No. 5 is already in evidence.

Mr. Martin: I say, it is.

Mr. Albert: And I further object to the question on the ground the exhibit speaks for itself.

Mr. Martin: He certainly has a right to refresh his recollection.

The Witness: What is the question?

(Last question read by the reporter.)

Mr. Martin: The question before that.

(Question read as follows: "Q. Now, Mr. Fletcher, has the Michigan Avenue Guild of Chicago ever entered into an agreement of any kind with the Fashion Originators Guild of America?")

By Mr. Martin.

Q. Is that agreement in effect at this time? agreement specifies the term of the agreement.

Q. I did not ask you that. I asked, is it in effect at this time? A. I believe the agreement expires in 1940, subject to cancellation by either party on specified notice.

Q. Has it ever been canceled by either party? A. No. sir.

Q. And, to the best of your knowledge, it is in effect at this time? A. Yes, sir.

Q. Is this the first agreement that was entered into on behalf of the Michigan Avenue Guild with the Fashion Originators Guild? A. I have knowledge of a previous agreement, but I cannot say that it is in my custody.

9704

Q. In whose custody is it in? A. I presume in the custody of our attorney.

Q. Do you know the date of that document? A. No, sir.

Q. Can you give me the approximate date of it, the year? A. The date of the contract?

Q. Yes. A. Not specifically, no.

Q. Was it in 1934? A. I cannot say.

Q. Was it in 1933? A. I could not say.

Mr. Martin: If your Honor please-

Examiner Bennett: Did you turn that document over to the attorneys of the Guild?

The Witness: Our attorney was in charge of handling all documents of such a nature. The secretary is not the executive secretary, merely takes the orders of the board of directors.

Examiner Bennett: Yes. He had original custody of the documents?

The Witness: Sir? The secretary?

Examiner Bennett: No, the attorney.

The Witness: Yes. Yes, your Honor.

Examiner Bennett: I see. All right.

Q. Nevel been in your custody? A. No.

Examiner Bennett: We will take a recess for ten minutes:

Mr. Martin: All right, sir.

(Thereupon a short recess was taken.)

Examiner Bennett: Be in order, please.

By Mr. Martin.

Q. Did the Michigan Avenue Guild ever have any correspondence with the F.O.G.A., relative to Frances Malsh, the witness who testified yesterday? A. Yes.

Q. I hand you Commission's Exhibits Nos. 224, 227, 228, 229, 230, 231 and 232 for Identification and ask, can you identify those pages? A. Yes.

Q. What are they? A. They are communications from me to Mr. Golby of the Fashion Originators Guild.

Q. Are there any communications from Golby to you? A. And communications from Mr. Golby addressed to me.

Q. The letters addressed by you to Mr. Golby were mailed to him? A. Yes, sir.

Q. And the letters from Mr. Golby were received by you? A. Yes, sir.

By Examiner Bennett.

Q. Were you writing in your capacity as secretary of the Guild? A. Yes, sir.

Mr. Martin: I offer in evidence, your Honor, as Commission's Exhibits Nos. 224, 227, 228, 229, 230, 231 and 232 the documents just identified by the witness.

Mr. Albert: No objection, your Honor.

Examiner Bennett: They are received, there being no objection.

(The documents referred to, heretofore marked for identification Commission's Exhibits 224, 227, 228, 229, 230, 231 and 232, respectively, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Fletcher, at the time of the agreement dated May 10th, 1935, that was entered into between the Michigan Avenue Guild and the F.O.G.A., was there any other agreement in effect between the two parties?

Mr. Albert: We will try to find out for you during lunch, Mr. Martin.

The Witness: No, sir.

9710

By Mr. Martin.

Q. Had the previous agreement expired; do you recall?
A. I believe it did.

Q. Do you know when it expired? A. No, sir.

Q. Do you know for how long a period there was no agreement between the two organizations, Michigan Avenue and Fashion Originators Guild? A. Approximately four or five months, possibly less.

Q. So that on the basis of four or five months the previous agreement would have expired in December of 1934?

A. Approximately.

Q. How long had that prior agreement been in effect?

A. I could not say.

9711

Q. Do you know why a new agreement was not entered into between the two organizations, not entered into immediately between the two organizations when the original agreement expired in December?

Mr. Albert: That is objected, if it please the Court, as wholly immaterial.

Examiner Bennett: Overruled. I will let him answer. You may answer.

The Witness: Do I know why?

Q. Yes. A. Negotiations were being conducted from the time the previous agreement expired during the—until the new agreement was signed.

Q. Were conferences held between the officers of the two organizations prior to the signing of this agreement?

A. Yes, sir.

Q. They were held in New York or Chicago, or where? . A. Chi. 130.

Q. Who attended these conferences on behalf of the

Fashion Originators Guild? A. No one.

Q. With whom in the Fashion Originators Guild of America did the Michigan Avenue Guild negotiate preparatory to signing this agreement? A. Our attorney handled the matter of the execution of the agreement.

Q. Do you know whom he conferred with in the Fashion Originators Guild? A. I presume with the officials of the

Fashion Originators Guild.

Q. Do you know whether he had any conferences with Mr. Post? A. Not definitely.

Q. Do you know whether he had any conferences with Mr. Golby? A. Not definitely.

Q. Did Mr. Post and Mr. Golby ever come to Chicago at the time of these negotiations, that these negotiations were in progress? A. I believe they were.

Q. Did you ever have any conferences with them? A.

9714 No, sir.

Q. So far as you know, did Mr. Marshall ever have any conferences with them on those occasions? A. I believe there was a meeting of the Board of Directors at which Mr. Marshall was present.

By Mr. Martin.

Q. Who prepared this agreement?

Mr. Albert: That is objected to, may it please the Court; entirely irrelevant and immaterial. I do not see what difference it makes who prepared it. The agreement is there, it speaks for itself.

Examiner Bennett: I cannot see the relevancy of it.

By Mr. Martin.

Q. Was this agreement submitted to the Michigan Avenue Guild for its signature by the Fashion Originators Guild, or did the Michigan Avenue Guild submit the agreement to the Fashion Originators Guild for its acceptance?

Mr. Albert: That is objected to, may it please the Court, as being highly immaterial and irrelevant to the issues involved.

Examiner Bennett; I will let him answer, if he knows. Overruled.

The Witness: The agreement was negotiated by our attorney.

Mr. Martin: I move that answer be stricken as not responsive to the question, your Honor.

Examiner Bennett: Read the question.

(Question read by the reporter.)

Mr. Albert: And, if neither one is true, the answer is "no," I believe?

The Witness: The Michigan Avenue Guild and the Fashion Originators Guild collaborated in the compiling of the agreement.

Q. Referring to the paragraph marked 1, on page 2, of Commission's Exhibit No. 5-A F, I find the following language: "Fashion Guild members will not sell their merchandise within the City of Chicago to such retailers who are not members in good standing of the Michigan Avenue Guild and/or to those retailers who do not observe the code of fair competition in the industry, and whose practices do not conform to the standards and regulations

9716

of the Michigan Avenue Guild. This provision not to apply to such stores as are named in the list hereto attached as Exhibit A, and hereby made a part hereof." Now, Exhibit A lists the names of Marshall Field & Company, Carson, Pirie, Scott & Company, Mandel Brothers, Charles A. Stevens, Maurice L. Bothschild, The Davis Store, Wieboldt's, Sears Roebuck & Company, The Hub, The Fair, The Boston Store and Madigan Brothers. Now I will ask you why were those stores, which I just named, excepted from the operation of paragraph 1? A. I could not say.

Q. Are those stores that I have just named members of

the Michigan Avenue Guild? A. No, sir.

19 Q. None of them? A. No, sir.

Q. Does the Michigan Avenue Guild forbid its members from purchasing from other than Guild manufacturers? A. No, sir.

Mr. Marshall: Objection.

By Mr. Martin.

Q. Do they request its members to confine their purchases to Guild members? A. No, sir.

Q. I will read from Commission's Exhibit No. 824, which is a letter from you to the members of the Michigan Avenue Guild, under date of November 4, 1935, and which states, in part: "This is to advise you that David Crystal, Inc., has resigned from membership in the Fashion Originators Guild of America, Inc., and his resignation has been duly accepted." What was the purpose of advising your members that David Crystal was no longer a member of the Guild?

Mr. Albert: Isn't that contained in the letter, Mr. Martin?

Mr. Martin: I do not see it.

Mr. Albert: I am just asking you. May I see the letter?

Mr. Martin: Certainly.

(Handing document to Mr. Albert.)

Mr. Albert: May I read the second paragraph of Commission's Exhibit 824? (Reading:) "As a result of such resignation, David Crystal, Inc., will no longer be entitled to enjoy the benefits of membership in the Fashion Originators Guild, and more particularly the right to register his original creations and obtain the benefit of the style protection machinery of the Guild." The answer is obvious, it is contained in the letter.

By Mr. Martin.

9722

Q. Now, I renew my question, and ask why did you feel it necessary to notify the members of your Guild that Crystal was no longer a member of the F.O.G.A.?

Mr. Albert: That is objected to, if the Court please. The exhibit in evidence speaks for itself as to the reason. Paragraph 2 clearly shows the reason for sending the letter, to inform the members.

Examiner Bennett: I will let him answer.

The Witness: David Crystal's resignation from the Fashion Originators Guild would not entitle him to register his style creations with the Guild. The Guild could, therefore, not apply its style protective set-up to his merchandise.

9723

By Mr. Martin.

- Q. Did you always notify Michigan Avenue Guild members when a manufacturer resigned from the F.O.G.A.?

 A. I won't say in every case. Occasionally.
- Q. You did not purposely overlook any, did you? A. No.
- Q. Why did you only notify them occasionally? A. No particular reason.

Q. Are the merchants in Evanston members of the Michigan Avenue Guild? A. No, sir.

Q. Do they have a separate organization of their own?

Mr. Albert: That is objected to; no foundation laid.

By Mr. Martin.

Q. If you know.

Examiner Bennett: If he knows. The Witness: I don't know.

9725 By Mr. Martin.

Q. Did you ever have any correspondence with the Fashion Guild relative to the situation in Evanston?

Mr. Albert: That is objected to as being wholly immaterial and irrelevant, not within the issues of the complaint.

Mr. Marshall: Same objection.

Examiner Bennett: Overruled. You may answer. The Witness: I believe so.

By Mr. Martin.

9726

Q. I hand you Commission's Exhibit No. 178 for Identification and ask can you identify that? A. Yes.

Q. What is it? A. A letter from Mr. Golby to me, dated April 15th, 1935.

Q. Was that letter received by you? A. Yes, sir.

Mr. Martin: I offer it in evidence.

Mr. Albert: This is objected to, if it please the Court, as concerning matters purely local in character of an intra-state nature, in no way binding upon the Fashion Originators Guild, and in which the Fashion Originators Guild expressly disclaims any interest.

Mr. Marshall: The same objection for the Michigan Avenue Guild.

Examiner Bennett: Overruled. I will receive it.

(The paper referred to, heretofore marked for identification, Commission's Exhibit 178, was received in evidence.)

Mr. Albert: Exception.
Mr. Marshall: Exception.

By Mr. Martin.

Q. I hand you Commission's Exhibits 181, 182 and 183 for Identification and ask can you identify those papers?

A. Yes.

A. Yes.
Q. What are they? A. They are letters from me to Mr.

Golby, a letter from me to Mrs. Emma Beattie, and a letter from Mrs. Emma Beattie to me.

Q. Were they letters from you mailed by you? A. The letters by me to Mr. Golby were mailed, yes.

Q. And the letter to Mrs. Beattie mailed? A. Yes.

Q. And the letter from Mrs. Beattie received? A. Yes.

Mr. Martin: I offer those in evidence.

Mr. Albert: If it please the Court, this is specifically objected to upon the grounds previously urged, being solely a question of local practice and local matters, outside of the scope of the Commission's complaint and outside of the jurisdiction of the Commission, in no way binding upon the Fashion Originators Guild; and further objected to unless the correspondence, if any, passing between the Michigan Avenue Guild, the so-called Evanston Guild, Mrs. Beattie, be likewise offered in evidence.

Mr. Marshall: The same objection.

Mr. Albert: The showing being incomplete without the full correspondence.

9728

Mr. Martin: Very obviously the letters that counsel refers to are in his possession or in the possession of the F.O.G.A.

Mr. Post: They were in the possession of the Michigan Avenue Quild when the investigator went in there. Why didn't he ask for them?

Mr. Albert: Those letters addressed to the Michigan Avenue Guild were in their possession when the Commission went in there, and if the investigator for reasons best known to himself thought it unwise to bring in the answer of the Fashion Originators Guild to the Michigan Avenue Guild, I don't see why the hearing should be interrupted at this time in an attempt to get those letters. Everything was thrown open to the investigator.

Mr. Post: And they took everything.

Mr. Martin: Now, if your Honor please, I move that that statement by counsel be stricken from the record.

Examiner Bennett: It may be stricken. All right. Overruled. Received.

Mr. Albert: Exception.

Mr. Marshall: Exception.

(The papers referred to, heretofore marked for identification, Commission's Exhibits 181, 182 and 183, were received in evidence.)

9732 By Mr. Martin.

Q. Referring again, Mr. Fletcher, to Commission's Exhibit No. 5-A to F, and the numbered paragraph 1 on page 2 thereof, we find the language: "And whose practices do not conform to the standards and regulations of the Michigan Avenue Guild." Now, I ask you, does that refer to the rules and regulations which were put in evidence yesterday as Commission's Exhibit—do you have that number, Mr. Keller?

Mr. Keller: The rules and regulations are Commission's Exhibit No. 746-A and B.

By. Mr. Martin.

- Q. Does the language in Commission's Exhibit No. 5, which I have just quoted, refer to Commission's Exhibit No. 746-A and B?
 - Mr. Albert: That is objected to, if it please the Court. The instrument speaks for itself.

Examiner Bennett: I will let him answer.

Mr. Albert! Exception.

The Witness: The question, please?

(The question was read.)

The Witness: Yes.

9734

By Mr. Martin.

- Q. Are there any other rules and regulations, other than those set out in Exhibit 746-A and B? A. No.
- Q. Referring again to the language of Commission's Exhibit 5-A to F: "And whose practices do not conform to the standards and regulations of the Michigan Avenue Guild." Now, what are the standards of the Michigan Avenue Guild? A. The standards of the Michigan Avenue Guild are those advocated by its by-laws, rules and regulations.
- Q. Since the Michigan Avenue Guild entered into this agreement, under date of May 10, 1935, have they lived up to the agreement? A. Well, just a minute. That is a big question. Substantially, yes.

Q. In what way have they deviated from it? A. There have been differences of opinion.

Q. Such as what?

Mr. Albert: That is objected to, may it please the Court, as being entirely irrelevant and imma-

terial, unless made certainly more definite as to what is meant.

Mr. Martin: I don't know. I cannot be any more definite.

By Mr. Martin.

Q. What instances do you refer to?

Mr. Albert: I think we have progressed sufficiently in this investigation, and I believe the Commission has presented sufficient facts, as to make it unnecessary for them now to go on a fishing expedition to determine what they would like

to continue to question about.

Mr. Martin: Now, if your Honor please, I believe we have progressed sufficiently in this case for Mr. Albert to have learned by this time that the Commission's autorneys will handle the case as they see fit, and not as Mr. Albert sees fit. He can conduct his own case to suit himself, but I respectfully submit that in the conduct of my case, I will be governed by my judgment, and not by Mr. Albert.

Examiner Bennett: What is the question? (Question read by the report. r.)

The Witness: Policies.

By Mr. Martin.

Q. What particular policies? A. I do not recall any, specifically.

Q. Well, you must have had something in mind when you said "policies." A. One shop may be—one member may be in favor of this particular ruling, and another member may be in favor of that particular ruling, in preference to some other ruling; or a member may think that a ruling may be a little stronger.

9737

Q. Do you mean by that, that there have been deviations from this agreement by individual members of the Michigan Avenue Guild, rather than deviations by the Guild as a whole?

Mr. Albert: That is objected to, if it please the Court, as to form, assuming a state of facts not in the evidence, attempting to place an answer in the witness' mouth; and, further, upon the ground it is an obvious attempt to cross-examine the witness, rather than to present facts on the direct question.

Mr. Marshall: Same objection for the Michigan Avenue Guild, if the Court please.

Mr. Albert: Further, upon the ground that the matter is obviously purely local in character, in no way binding upon the Fashion Originators Guild, and is directed toward eliciting facts which concern themselves solely with local matters.

Examiner Bennett: Overruled. You may answer.

The Witness: Question, please.

(The question was read by the reporter.)

The Witness: Deviations from our rules and regulations by individual members.

By Mr. Martin.

Q. Was that done with the consent or approval of the Michigan Avenue Guild? A. No, sir.

Mr. Albert: If your Honor please, can't we shorten this, and have it appear that some of the members of the Michigan Avenue Guild disobeyed the rulings, and steps were taken to see that they were obeyed? I think that is all we are getting at. We are going to waste an hour here on a matter of that kind.

Examiner Bennett: All right.

9740

Edward A. Fletcher-For Commission-Direct.

Mr. Martin: Have you finished now, Mr. Albert? Examiner Bennett: We will adjourn until 2 o'clock.'

(Whereupon, at 12.30 o'clock, Eastern Standard Time, a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION.

Hearing resumed at 2 o'clock P. M., E.S.T.

9743

Examiner Bennett: Be in order, please. You may proceed. You may resume the stand.

Mr. Marshall: Just one moment.

Mr. Albert: In the meantime, your Honor, I would like to point out with respect to Commission's Exhibits 178, 181, 182 and 183, you may recall that I objected to 181, 182, 183 going into evidence unless the reply or the correspondence from the Fashion Originators Guild with respect to those letters was also in evidence.

After checking during the luncheon period, it appears that Commission's Exhibit No. 178 now in evidence is the Guild correspondence which replies to the series of communications known as Commission's Exhibits 181, 182, 183.

9744

The reason why this was not apparent immediately was because Commission's Exhibit 181 is erroneously dated May 12th and should be dated April 12th.

Examiner Bennett: I'see.

Mr. Albert: The date which appears in typewriting on the letter was not corrected. However, the pencil notation above it shows that the letter was actually written on April 12th and not on May 12th. Examiner Bennett: I see. All right. I am glad you called our attention to it.

Mr. Albert: See it up here?

Mr. Martin: I see.

Mr. Albert: This Exhibit No. 178 is April 15th.

EDWARD A. FLETCHER was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination (resumed) by Mr. Martin.

Q. Is the firm of John T. Shayne & Company a member 9746 of the Michigan Avenue Guild? A. No, sir.

Q. Were they ever a member of the Michigan Avenue Guild? A. Yes, sir.

Q. When did they resign from the Michigan Avenue Guild? A. Sometime in 1935, I believe.

Q. Take a look at these. A. This top letter, Mr. Martin?

Q. All of them. They all deal with the Shayne Company. I just wanted to see—hand them to me a minute. I had better refer to them for the record. I hand you Commission's Exhibits Nos. 235 to 242 for Identification, and ask you can you identify those papers? A. I can.

Q. What are they? A. They are letters—some letters from me to Mr. Post, and letters from me—from me to Mr. Post in regards to John T. Shayne & Company.

9747

Mr. Albert: These are objected to.

Examiner Bennett: All right. Receive the exhibits.

Mr. Albert: Exception.

(The papers referred to, heretofore marked for identification Commission's Exhibits 235, 236, 237, 238, 239, 241 and 242, were received in evidence.)

Q. Referring to Commission's Exhibit No. 237, which is a letter from Mr. Post to Mr. Considine of the John T. Shayne Company.

Mr. Albert: What is the date? Mr. Martin: It has no date on it.

By Mr. Martin.

Q. (Continuing) —I find the following language: "I am informed that the by-laws of the Michigan Avenue Guild have been adjusted to meet the objection that you had to them." Do you recall what objection Mr. Considine had to the by-laws of the Michigan Avenue Guild?

Mr. Albert: "Yes" or "no," Mr. Fletcher. The Witness: No.

By Mr. Martin.

Q. Do you recall which particular regulation he objected to?

Mr. Albert: "Yes" or "no," Mr. Fletcher. The Witness: Yes.

By Mr. Martin.

Q. Which one was it?

97.50

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial, concerning a matter of local purview entirely, in no manner binding upon the Fashion Originators Guild, not within the complaint of the Federal Trade Commission, nor within the jurisdiction of the Commission.

Mr. Marshall: Same objection for the Michigan Avenue Guild.

Examiner Bennett: Overruled.

- Q. You may answer. A. Mr. Post's reference to bylaws, I think, refers to the rules and regulations of the Guild. The by-laws were not changed, as I recall. The rules, in regard to clearance sales, to which Mr. Considine took some exception, were modified. That is, the rules and regulations of the Michigan Avenue Guild.
- Q. As I understand it, there was a regulation dealing with sales, is that correct? A. Yes, sir.
- Q. And that Mr. Considine objected to that particular regulation, and it was changed, is that correct? A. As it existed at that time, yes, sir.
 - Q. What changes were made?

9752

Mr. Albert: That is objected to, may it please the Court, as entirely immaterial and irrelevant, and for all of the additional reasons previously stated with respect to the matter being local in character.

Mr. Marshall: Same objection on behalf of the Michigan Avenue Guild.

Examiner Bennett: Verruled.

The Witness: It was modified to permit a greater latitude of promotional activity.

By Mr. Martin.

- Q. Now, Mr. Fletcher, when an application for membership is received by the Michigan Avenue Guild, do you notify the Fashion Guild that you have received the application? A. If, after the application is presented to the Board of Directors, the application is accepted or approved, the Fashion Originators Guild is notified.
- Q. Are they ever advised before action of the local Guild in either refusing or accepting the application? A. In care instances, the Fashion Originators Guild may be advised before the formal approval.

Q. Did you ever receive an application from Emily Mazer? A. Yes, sir.

Q. Was her application accepted? A. It was not accepted by the Board of Directors.

Q. She is not a member of the Michigan Avenue Guild? A. No. sir.

Q. I hand you Commission's Exhibit No. 233 for Identification and ask can you identify that? A. Yes, sir.

Q. What is it? A. It is an application executed by Emily Mazer for membership in the Michigan Avenue Guild.

9755

Mr. Martin: I offer it in evidence.

Mr. Albert: No objection, your Honor, subject to connection.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 233, was received in vidence.)

By Mr. Martin

Q. What does the notation "advised New York 12-21-34," on the bottom of that refer to? A. It means I communicated with New York in some respect in connection with that application on that date.

Q. Will you refer to Commission's Exhibit No. 233, for the purpose of refreshing your memory, and tell me what was the date of the first contract between the Fashion Originators Guild and the Michigan Avenue Guild?

Mr. Albert: I believe Mr. Marshall has brought that contract in, Mr. Martin?

The Witness: I do not understand the question, Mr. Martin.

- Q. I say, just use that to refresh your recollection. Now, can you tell me what was the date of the contract between the Michigan Avenue Guild and the Fashion Guild, which was prior to the one that is in evidence? A. That contract was May 10, 1935.
- Q. Yes. Now, what was the date of the one prior to that? A. As to that, I cannot say.
- Q. Does this exhibit refresh your recollection any? A. No:
- Q. Did you read that last part there, the last part of the third line? A. Oh, pardon me. As to the date of that agreement.
- Q. What was that date? A. The agreement was dated December 17, 1932.

Examiner Bennett: Albright.

By Mr. Martin.

Q. Now, Mr. Fletcher, did the Fashion Originators Guild ever request the Michigan Avenue Guild to ask its members, that is, members of the Michigan Avenue Guild, not to purchase from manufacturers who are not members of F.O.G.A.?

Mr. Albert: Objected to, if it please the Court, as having been previously answered.

Mr. Martin: I don't think so. I asked him the question as to whether the Michigan Avenue Guild had ever done it. I have not asked him whether it was requested by the Fashion Originators Guild.

The Witness: The question, please.

Examiner Bennett: I will let him answer.

(The question was read.)

The Witness: Not to my knowledge.

9759 .

Q. I hand you Commission's Exhibit No. 234 for Identification and ask can you identify that? A. Yes.

Q. What is it? A. It is a letter from Mr. Golby to me dated November 10th, 1934.

Q. Relative to what? I mean, don't say what the letter states, but just what it is about. A. Relative to Emily Mazer.

Mr. Martin: I offer this in evidence.

Mr. Albert: No objection.

Examiner Bennett, Received.

9761

(The paper referred to, heretofore marked for identification Commission's Exhibit 234, was received in evidence.)

By Mr. Martin.

Q. What co-operation between M.A.G. and F.O.G.A. is referred to in that letter?

Mr. Albert: That is objected to, if it please the Court. The letter speaks for itself.

Examiner Bennett: I will overrule the objection and let him answer, if he knows.

(There was a short pause.)

Examiner Bennett: I have already passed upon it. He may answer.

Mr. Feldman: Read the question back.

(The question was read.)

The Witness: The Interpretation of that paragraph has never been

Mr. Albert: May I also object, if it please the Court, upon the ground that the time in question, the matter therein referred to at the time in question was legal and particularly sanctioned by the National Industrial Recovery Act, whatever may be the position with respect thereto to-day.

Examiner Bennett: Yes. Well, of course, that is one of the things that is in issue.

Mr. Martin: Go ahead with your answer.

Examiner Bennett: I will overrule the objection.

The Witness: The interpretation of that paragraph to my mind has never been quite clear.

By Mr. Martin.

Q. What is your interpretation of it?

Mr. Albert: That is objected to, if it please the Court, as being immaterial and irrelevant. The witness has testified that it was not clear to him what was meant. The only man who can therefore adequately explain it is the man who wrote the oletter.

9764

Examiner Bennett: I will sustain the objection unless it is shown that some action was taken with reference to it.

By Mr. Martin.

Q. As a result of this letter, was any action taken by the Michigan Avenue Guild?

Mr. Albert: That is objected to, if it please the Court, unless the testimony is connected in such a manner so as to show that the action is continued and is still continuing after the expiration of the N.R.A. down to and including the present period, within the period included in the Federal Trade Commission's complaint.

9765

Examiner Bennett: Overruled. You may answer.

By Mr. Martin.

Q. Go ahead, sir. A. In what respect?

Mr. Albert: Exception.

- Q. With respect to that last paragraph? A. None what-soever.
- Q. Emily Mazer, I believe, you testified has never been a member of the Michigan Avenue Guild? A. Yes, sir.

Mr. Albert: "Yes, sir," she has never been a member, or "Yes, sir" you so testified?

The Witness: He believes that I testified that Emily Mazer was never a member of the Michigan Avenue Guild. I did.

9767

By Mr. Martin.

Q. Do you know whether she had signed a declaration with the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court, no foundation has been laid. It is incompetent for this witness to testify as to what Mrs. Mazer may or may not have done with the Fashion Originators Guild.

Examiner Bennett: Overruled. I will let him answer, if he knows.

The Witness: I do not know. Examiner Bennett: All right.

By Mr. Martin.

9768

Q. Did the Fashion Originators Guild ask you to shop Mrs. Mazer's store? A. As I recall——

Mr. Albert: If it please the Court, I believe the letter in evidence covers that fully. We seem to be going on the principle to-day, your Honor, of asking the witness questions and then confronting him with letters which either support or tend not to support his testimony. May I ask that in order

that in order to save time the witness be shown the letters in the first place, that they go in evidence, and that that is the end of it. I. don't quite see the point of attempting to contradict his own witness and then support his own witness by putting in letters which are the best evidence after the witness has testified orally.

Mr. Feldman: That has been the practice in other hearings.

Examiner Bennett: I don't know that that has been the procedure. I think there is no serious conflict between the evidence and the letters.

By Mr. Martin.

Q. Will you refer to the exhibit and answer my question? A. The question is, Mr. Martin?

Mr. Martin: Read it back.
(The question was read.)
The Witness: Yes.

By Mr. Martin.

Q. Did you shop the store? A. She had no store.

Q. Did you shop her place of business? A. She had no place of business.

Q. Where did she conduct business?

Mr. Albert: That is objected to, if it please the Court. The witness testified that she had no place of business.

By Mr. Martin.

Q. Where did she make her sales from? A. As explained to me by Mrs. Mazer, she made her sales from hotels, various summer resorts, traveling on the road.

Q. Did you in any way attempt to shop her stock of dresses wherever located? A. No.

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- Q. Was the firm of Fred A. Block a member of the Michigan Avenue Guild? A. No, sir.
 - Q. Have they ever been members? A. No, sir.
- Q. Have they ever made application for membership?
- Q. Do you know whether or not the firm of Fred A. Block were ever members of the Fashion Originators Guild of America? A. Yes, sir.
- Q. Did you ever have any correspondence with the Fashion Originators Guild of America relative to Fred A. Block? A. Yes, sir.

Q. I hand you Commission's Exhibits Nos. 210 to 222, inclusive, for Identification, and ask can you identify those papers?

Mr. Albert: Let's have them as you finish them, will you, please?

By Mr. Martin.

Q. Can you identify those papers? A. Yes, sir?

Q. What are they? A. Communications from me to the Fashion Originators Guild, in regard to Fred A. Block, and communications from the Fashion Originators Guild to me regarding Fred A. Block.

9774

Q. And they were duly received and mailed by you? A. Yes, sir.

Mr. Martin: I offer those in evidence.

Mr. Albert: I object to the admission in evidence, if the Court please, of Commission's Exhibits 210 to 222, inclusive, upon the ground that they concern matters which are purely of local origin, matters which concern the members of the Michigan Avenue Guild, who are Chicago retailers, and

Fred A. Block & Company, which is a Chicago manufacturer, with respect to the problems that exist between that manufacturer and those retailers, with which the Fashion Originators Guild has no concern, the actions of the Guild with respect to which are not binding upon the Fashion Originators Guild, and the subject matter of which is not within the Federal Trade Commission complaint, nor within the jurisdiction of the Federal Trade Commission.

Mr. Albert: Exception, your Honor.

(The documents referred to, heretofore marked for identification Commission's Exhibits 210 to 222, 9776 both inclusive, were received in evidence.)

Mr. Albert: Your Honor, I notice that Mr. Martin has quite a good deal of correspondence there yet, and I believe that the philosophy of the Commission in offering them is that it is correspondence that passed in the regular course of business between the parties thereto. Now, as regards to that fact, perhaps if Mr. Martin will let me see all of the correspondence we may be able to save a great deal of time and at least be able to concede that it was received or was sent, because these seem to be the only questions that Mr. Martin is asking with respect to them.

Mr. Martin: This is all-off the record.

(A discussion was had off the record.)

Mr. Albert: Now, if it please the Court-

Mr. Martin: I haven't offered them yet.

Mr. Albert: I am sorry.

Mr. Martin: I merely let you look at them. I had better handle it this way, your Honor. are all mixed up exhibit numbers.

Q. I hand you Commission's Exhibits for identification, Nos. 179, 180, 192, 193, 194, 195, 196, 197.

Mr. Albert: It is conceded that they have been sent by the parties who sent them and who appear to have sent them in the letters and to have been received by the parties to whom they were sent as appear in the letters.

(The papers referred to, heretofore marked for identification, Commission's Exhibits 179, 180, 192, 193, 194, 195, 196, 197, and received in evidence.)

9779

Examiner Bennett: Objection overruled. Received in evidence.

Mr. Albert: Exception.

Examiner Bennett: As to the numbers indicated.

(The papers referred to, heretofore marked for identification, Commission's Exhibits 184, 185, 186, 187, 188, 189, 190, 191, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208 and 209, were received in evidence.)

Examiner Bennett: We will take a recess of ten minutes.

(Thereupon a short recess was taken.) Examiner Bennett: Be in order, please.

9780

By Mr. Martin.

- Q. I hand you Commission's Exhibit No. 223 for Identification and ask you can you identify that? A. Yes, sir.
- Q. What is it? A. It is a letter from me to Mr. George M. Gleason, dated April 22nd, 1935.

Mr. Martin: I offer this in evidence.

Mr. Albert: This is objected to, may it please the Court, upon the ground it is purely an inter-office

communication between Mr. Fletcher and Mr. Gleason, the subject matter of which is not binding upon the respondent, Fashion Originators Guild of America; further, upon the ground that it concerns purely local matters, intrastate in character, not within the Federal Trade Commission complaint, nor within the jurisdiction of the Federal Trade Commission.

Mr. Marshall: Same objection for Michigan Avenue Guild, Mr. Gleason at that time having been president of the Michigan Avenue Guild.

Examiner Bennett: Overruled, and received.

(The document referred to, heretofore marked for identification Commission's Exhibit 223, was received in evidence.)

Mr. Martin: I will ask that this be marked for identification as Commission's Exhibit 828.

(The document referred to was marked Commission's Exhibit 828 for Identification.)

By Mr. Martin.

- Q. I hand you Commission's Exhibit 828 for Identification and ask you can you identify that? A. Yes.
- Q. What is it? A. It is a letter from me to Mr. Marshall.
 - Q. Under what date? A. Under date of May 17, 1934.

Mr. Martin: I offer it in evidence as Commission's Exhibit No. 828.

Mr. Albert: This is objected to, may it please the Court, upon the ground it is purely an interoffice communication between Mr. Fletcher and the attorney for the Michigan Avenue Guild; on the further ground that it.concerns matters purely local

in character, of an intrastate nature, not within the Federal Trade Commission complaint, nor within the jurisdiction of the Commission; and, poin the further ground that it concerns matters long antedating the period which is the subject of the Federal Trade Commission's complaint, and that the subject matter of this particular letter has long been superseded by the agreement between the F.O.G.A. and the Michigan Avenue Guild now in evidence as Commission's Exhibit 5, now in force; by reason of all of which this particular exhibit becomes entirely immaterial and irrelevant.

Mr. Marshall: Same objection for the Michigan Avenue Guild.

Examiner Bennett: Overruled. Received. Mr. Albert: Exception.

(The document referred to, heretofore marked for identification Commission's Exhibit 828, was received in evidence.)

Mr. Martin: Mark this for identification.

(The papers referred were marked Commission's Exhibits Nos. 829-A to J, inclusive, for Identification.)

By Mr. Martin.

9786 Q. I hand you Commission's Exhibit No. 829-A to J, and ask, can you identify it.

Mr. Albert: That is conceded to be the previous contract entered into between the Michigan Avenue Guild and the F.O.G.A, prior to the one now in evidence.

The Witness: Yes.

Mr. Albert: Commission's Exhibit No. 5.

Mr. Martin: I offer it in evidence.

Mr. Marshall: Dated December 17th, 1932.

Mr. Martin: I now offer in evidence Commission's Exhibit No. 829-A to J, and agreement entered into between the Michigan Avenue Guild and the Fashion Originators Guild of America, Inc., under date of December 17, 1932.

Mr. Albert: That is objected to, if it please the Court, as being only irrelevant and immaterial to the proceedings now pending before the Commission, as being an agreement long antedating the period covered by the Federal Trade Commission's complaint, and an agreement which is long since in expiration.

Mr. Marshall: Same objection on behalf of the Michigan Avenue Guild. We ask leave to withdraw the original and substitute a photostatic copy. Examiner Bennett: Yes; that may be done.

(The papers referred to, heretofore marked for - identification Commission's Exhibits Nos. 829-A to J, were received in evidence.)

By Mr. Martin.

Q. Now, Mr. Fletcher, were there any other contracts or agreements between the Michigan Avenue Guild and the Fashion Originators Guild other than the one under date of December 17th and the one which is in effect now? A. No, sir.

Q. Referring to Commission's Exhibits Nos. 208 and 209; 209 being a letter from Mr. Golby to you under date of January 11th, 1935, and requesting that you notify the retail members of the resignation of Arthur Weiss & Company from the Fashion Originators Guild; did you notify your Guild members? A. I am not positive.

Q. See if that will help you any. You told him you would (indicating Commission's Exhibit No. 208). A. I may have told him I would, but I am not posicive.

9788

- Q. You don't know whether you did or not? A. No, sir.
- Q. Is Harriet Stein, a member of the Guild at this time? A. Yes, sir.
- Q. Referring to a letter from Miss Stein to you under date of January 14th, 1935, Commission's Exhibit No. 204, I note the following language: "I wish to advise the Executive Board of the Michigan Avenue Guild that I have, effective January 14th, taken Suite 301 at the Belmont Hotel as my living quarters, and will retain Suite 263 for business purposes only." Does that comply with the regulations of the Michigan Avenue Guild?

.9791

Mr. Albert: That is objected to, if it please the Court.

Mr. Marshall: Object.

Mr. Albert: Immaterial and irrelevant, concerning matters purely local in character, no connection with the F.O.G.A. has been shown, and a matter long since passed and completely a dead issue.

Examiner Bennett: Overruled. You may answer.

The Witness: Yes, the second floor has a commercial aspect.

By Mr. Martin.

- Q. You mean of that particular hotel? A. Yes, sir. 1792 There are other businesses on that floor.
 - Q. Yes. Was the application of Bessie I. Barnett for membership in the Michigan Avenue Guild ever accepted? A. Yes, sir.
 - *Q. Did she change her place of business to conform to the rules and regulations of the Michigan Avenue Guild? A. She changed her place of business.

- Q. Does the Michigan Avenue Guild employ a local shopper? A. No, sir.
- Q. Does the Fashion Originators Guild have a shopper in Chicago? A. Yes, sir.
- Q. Does the Michigan Avenue Guild pay any part of the expenses of that shopper? A. No, sir.
- Q. Does this shopper shop stores which are members of the Michigan Avenue Guild? A. Yes, sir.
 - Q. Who is the shopper? A. Miss Helen Kindler.
- Q. Does Miss Kindler make any report to you of her activities? A. No, sir.
- Q. Does the Fashion Originators Guild make any report 979 to you of Miss Kindler's activities? A. No, sir.
- Q. Do you report to the Fashion Originators Guild any violations by your members of the Michigan Avenue Guild Tules and regulations? A. On recommendations of the Board of Directors, such reports are made.

By Mr. Martin.

Q. Do you request the Fashion Originators Guild to take any action relative to these violations?

Mr. Albert: Same objection. Examiner Bennett: Same ruling.

- A. That depends upon the recommendation of the Board.
- Q. Does the Fashion Originators Guild enforce your rules and regulations?

Mr. Albert: That is objected to, if the Court please, as calling for the conclusion of the witness with respect to what action the F.O.G.A. takes.

Examiner Bennett: Overruled. He may answer. Mr. Albert: Exception.

A. Such an occasion has never come to pass.

9796 Edward A. Fletcher-For Commission-Direct-Cross,

By Mr. Martin.

Q. Have any retail stores who are members of the Michigan Avenue Guild ever been red carded by the F.O.G.A. for violations of the rules and regulations of the Michigan Avenue Guild?

> Mr. Albert: That is objected to, if it please the Court

Examiner Bennett: He has answered.

Cross-examination by Mr. Albert.

Q. Is it not a fact, Mr. Fletcher, that the interpretation of Commission's Exhibit No. 5, as between the Michigan 9797 Avenue Guild and the Fashion Originators Guild, is that the members of the Fashion Originators Guild are privileged to sell merchandise to retailers who agree either by signing a declaration of co-operation or by declaring it to be their policy to abide by the standards of ethical conduct set up by the Michigan Avenue Guild and the F.O.G.A., even though such retail establishments may not be members of the Michigan Avenue Guild?

> Mr. Martin: Objected to as calling for a coaclusion of the witness.

Mr. Albert: If it please the Court, that is the interpretation of the specific parties to this agreement.

Examiner Bennett: I am going to let him answer. The Witness: That is a fact and practice.

By Mr. Albert.

Q. And is it not a fact, Mr. Fletcher, that in practice since the adoption of this agreement, the members of the F.O.G.A. have been selling their merchandise to retailers in the district embraced by the Michigan Avenue Guild who are not members of the Michigan Avenue Guild but

who have signified their willingness to abide by the standards of ethical conduct set up by the Michigan Avenue Guild and the F.O.G.A.?

Mr. Martin: And have signed a declaration?

By Mr. Albert.

Q. Have either signed a declaration or have signified their intention of abiding by the principles? A. That is a fact.

Mr. Albert: That is all.

By Examiner Bennett.

9800

9801

- Q. How do they signify their intention of complying?

 A. In the conduction of their business.
- Q. Well, how? In what specific way do they signify their intention of complying? A. By signing a declaration of co-operation.
- Q. There is only one class, then, the class who sign declarations of co-operation; is that true? A. Only one class of——
- Q. Only one class of those gentlemen who are not considered as members of the Michigan Avenue Guild? A. Anyone who signs a declaration of co-operation can buy Guild merchandise from Guild manufacturers.
- Q. And that is the way in which they indicate their cooperation? A. Yes, sir.

(Whereupon, at 4.25 o'clock P. M., Eastern Standard Time, the hearing in the above-entitled matter was adjourned, to reconvene at 10 o'clock Eastern Standard Time the following day, being Thursday, September 10th, 1936.)

Louis E. Klein-For Commission-Direct.

Room 1123, New Post Office Building, 433 West Van Buren Street, Chicago, Illinois, September 10, 1936.

Met, pursuant to adjournment, 10 o'clock A. M., E.S.T.

Before: John W. Bennett, Examiner.

(Same appearances.)

9803

PROCEEDINGS.

Examiner Bennett: Be in order, please.

Louis E. Klein was thereupon called as a witness for the Commission, and, having first been duly sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Mr. Klein, will you please state your name? A. Louis E. Klein.

Q. And your residence? A. Peoria, Illinois.

Q. What is your occupation, Mr. Klein? A. Vice-president of D. W. Klein Company, Peoria, Illinois.

9804

Mr. Albert: May it please the Court, may I make a statement?

I wish to again enter a protest on behalf of the respondent F.O.G.A. to the actions of the Commission in bringing to Chicago a witness with respect to a store in Peoria, Illinois, without any notice whatsoever to the respondent Fashion Originators Guild except as I shall hereinafter note; as a result of which the respondent Fashion Originators Guild

has none of its correspondence or any of its records covering this particular store, and by reason of which it will be most difficult for the respondent to cross-examine.

Libelieve that Mr. Martin informed me yesterday, off the record, that he intends to put one more witness on the stand from Peoria. We wired to New York in an attempt to get information with respect to the store, and have as yet received no reply.

As a result thereof, your Honor, I respectfully request that, in the event this witness should, in my opinion, testify to anything that requires cross-examination, that we have a right to reserve our cross-examination and subpoena this witness to appear in New York to give his testimony.

Mr. Martin: I would like to state, if your Honor. please, that Mr. Albert asked me on Tuesday what witnesses I had, and I told him, as early as Tuesday, that I would have a witness here from Peoria, Illinois.

Mr. Albert: But you were not sure you were going to put him on. Yesterday you first told me definitely you were going to put him on, and that is when I wired.

Mr. Martin: I don't think it is the duty of the Commission's attorneys to inform the respondent as to what witnesses they are going to use. However, I did put him on notice as early as Tuesday that I was contemplating calling a witness from Peoria, Illinois.

Mr. Albert: The record is clear on that, I believe, your Honor.

Examiner Bennett: You may proceed.

Mr. Martin: Will you read the last question and answer?

(Last question and answer read:)

9806

- Q. What business is D. W. Klein Company engaged in? A. Ready-to-wear merchandising.
- Q. How long have you been vice-president? A. I have been an official of the company for the past five years.
- Q. How long have you been with the company? A. Twenty years. I have been an official for twenty years, but it was reorganized.
- Q. Does the store handle women's dresses and suits?
 A. Yes, sir.
 - Q. Misses' also? A. All kinds.
- Q. In what price lines, at wholesale, cost price? A. 9809 In the upstairs departments, from \$4.75 to \$29.75.
 - Q. Do you have a basement store? A. A basement store, yes, sir.
 - Q. What price lines there? A. \$6.75 down, on dresses.
 - Q. Do you have anything to do with the buying end of the business? A. I buy all the dresses, ensembles and knit goods.
 - Q. Now, Mr. Klein, did you ever hear of the Fashion Originators Guild of America? A. Yes, sir.
 - Q. When did you first hear of it? A. When it was first organized.
 - Q. Did you ever sign any declaration of co-operation with the Fashion Guild? A. Yes, sir.
 - Q. Do you recall when you signed that? A. I would not recall the exact date.
 - Q. Could you give me the approximate date? A. I couldn't tell. I think you have got it down there. I cannot remember the exact date. I know it was shortly after the Guild was organized.
 - Q. Would you say, then, it was some time in 1933? A. If that is when the Guild was organized, I believe it was in the following season after it was organized.
 - Q. Why did you sign this declaration of co-operation?

Mr. Albert: That is objected to, as immaterial and irrelevant. There is no testimony or foundation laid to the effect that the witness signed the declaration, or that he knows who, on the part of the store, signed it.

We have a general statement here by the witness, which I presume, without explanation, refers to the fact that the store signed the declaration. The witness has, I believe, in passing, made reference to the fact that Mr. Martin has the declaration there, and I think that certainly would have been much simpler, and saved time, if that declaration had been put in. I certainly would not have objected to it.

9812

Mr. Martin: You are very kind.

Examiner Bennett: He may answer.

Mr. Albert: Exception.

Mr. Martin: Read the question, please.

(Question read by the reporter.)

The Witness: To secure merchandise from houses that were organized under the F.O.G.A.

By Mr. Martin.

Q. Had you been advised that it was necessary for you to sign this declaration in order to be able to purchase from Guild houses?

Mr. Albert: That is objected to, if the Court please, and I ask the Court to admonish Mr. Martin not to lead the witness. It is his witness. It is the second leading question that has been put, and, I think, at this stage of the game, such type of questions are known by Mr. Martin to be objected to by the respondent, and I respectfully ask that the objection be sustained as to the form of the question. We want testimony from the witness, not from Mr. Martin.

Examiner Bennett: He may answer. Mr. Martin: Read the question. (Question read by the reporter.)
The Witness: Naturally.

By Mr. Martin.

Q. Now, after signing this declaration, Mr. Klein, did you co-operate with the Fashion Originators Guild? A. Yes, sir.

Q. Did you return garments when requested by the Guild to return the same? A. There was only one cause for return; and at the time, the garment was sold, so it was impossible to return it.

Q. Have you ever been red carded by the Fashion Originators Guild? A. Yes, sir.

Q. Do you recall when it was? A. You mean the exact date?

Q. The approximate date? A. I think it was in about April, 1935.

Q. Why were you red carded, if you know? A. We received a letter regarding a certain copy of a dress, and, in the interim, the dress was sold. However, we re-ordered the dress, or, rather, the dress was on order, I will change that statement, the dress was on order, and it was received, and before we had an opportunity of returning it, it was again sold.

9816 Q. And, as a result of that incident, you were red carded? A. Yes, sir.

Mr. Martin: Mark these for identification Commission's Exhibits 830-A and B, 831, 832-A and B, and 833.

(The documents referred to were marked Commission's Exhibits 830-A and B, 831, 832-A and B, and 833 for Identification.)

By Mr. Martin.

- Q. I hand you Commission's Exhibit No. 830-A and B for Identification and ask you can you identify that? A. Yes, sir.
- Q. What is it? A. It is a reply, it is a letter from the Fashion Originators Guild to L. E. Klein of Peoria, regarding a dress.
- Q. Do not say what it is about. What date is it on? A. April 25, 1935.
- Q. I hand you Commission's Exhibit 831 and ask you can you identify that? A. Yes, sir.

Q. What is it? A. April 27th, 1935.

Q. A letter from whom to whom? A. A copy of a letter 9818 to the Fashion Originators Guild, signed by our controller.

Q. Was this letter, of which Commission's Exhibit No. 830-A is a copy, received by your firm? A. Yes, sir.

- Q. Is this letter, Commission's Exhibit No. 831, a copy of a letter which your store wrote in reply to this letter? A. Yes, sir.
- Q. Was this letter mailed, sent out from your store? A. I presume so.
- Q. I hand you Commission's Exhibit No. 832-A and B for Identification and ask you can you identify that? A. Yes, sir.

Q. What is it? A. April 29th.

Q. Is it a letter? A. A letter from the Fashion Originators Guild to Klein, Peoria.

Q. I hand you Commission's Exhibit 833 and ask you can you identify that? A. I do.

Q. What is it? A. Declaration of co-operation, Fashion Originators Guild and our store.

Q. And is that the declaration which is referred to in Commission's Exhibit No. 832-A? A. Yes, sir.

Q. Was this letter, No. 832 A, and Exhibit 833-received by your firm from the Fashion Originators Guild? A. Yes, sir.

Mr. Martin: I offer in evidence Commission's Exhibits 830, 831, 832 and 833.

Mr. Albert: No objection:

Examiner Bennett: Received.

(The papers referred to, heretofore marked for identification Commission's Exhibits 830, 831, 832 and 833, were received in evidence.)

By Mr. Martin.

9821

- Q. Now, Mr. Klein, when the letter, which is Commission's Exhibit No. 832-A and B, was received, which letter advised you that the declaration of co-operation was being returned, what did you do? A. We requested a reinstatement.
 - Q. Do you have a New York office? A. Yes, sir.
- Q. Who at that time was your— A. Affiliated Buying. Service.
- Q. Did you take the matter up with F.O.G.A. direct, or how did you take it up? A. Well, as far as my recollection is concerned, we took it up with the F.O.G.A. direct originally.
- Q. And— A. However, later we—after some discussion we had, we took it up with our New York office.

9822

Mr. Martin: Give those exhibit numbers, will you?

(The papers referred to were marked Commission's Exhibits 834, 835, 836, 837, 838 and 839 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 834 for Idencatification and ask can you identify that? A. I do.

- Q. What is it? A. It is a letter from the New York office to Klein's, Peoria, Illinois, dated May 6th, 1935.
- Q. Now, pursuant to that letter, did you take any steps towards rejoining the Guild?

Mr. Albert: Resigning the declaration, Mr. Martin.

Mr. Martin; O.K.

By Mr. Martin.

Q. Signing up a new declaration? A. I will have to look at that letter again.

Q. I hand you Commission's Exhibit No. 835 for Identification. See if you can identify that. A. Dated May 8th, to the Fashion Originators Guild from Klein's of Peoria, Illinois.

9824

- Q. I hand you Commission's Exhibit No. 836 for Identification and ask can you identify that? A. I do.
- Q. What is it? A. It is a letter to Klein's from the Fashion Originators Guild returning our—
 - Q. Under what date? A. June 27th, 1935.
- Q. I hand you Commission's Exhibit No. 837 and ask can you identify that? A. I do. July 9th, from the Affiliated Buying Office to Klein's, Peoria, Illinois.
- Q. Commission's Exhibit No. 838. Can you identify that, and if so, what is it? A. I do. A letter from the Affiliated Buying Company to Klein's, Peoria, Illinois, dated July 29th, 1935.

9825

- Q. And Commission's Exhibit No. 839. A. A letter from the Fashion Originators Guild of America to Klein's, Peoria, Illinois, dated July 30th, 1935.
- Q. Now, referring to Commission's Exhibit No. 834, were any steps taken towards signing up a new declaration with the Guild pursuant to that letter?

Mr. Albert: That is objected to, if it please the Court. Obviously the letter is something that re-

fers to his steps, and is the best evidence of the substance matter thereof, and I believe we can save some time if it is offered in evidence rather than have this procedure of having a witness testifying orally and then putting in the best evidence to substantiate the oral testimony.

Mr. Martin: I don't think that happens to be true in this case, Mr. Albert.

Mr. Albert. Then it certainly can't refresh his recollection if it isn't true.

By Mr. Martin.

9827 Q. Did you take any steps pursuant to that letter? A. Not that I know of.

Mr. Martin: I offer in evidence Commission's Exhibit No. 834.

Mr. Albert: This is objected to, if it please the Court. It is in no way binding upon the Fashion Originators Guild, being the substance of a communication between his store and some third party as yet, I believe, not even appearing in the record. I am not certain of that.

Mr. Martin: Oh, no.

Mr. Albert: But certainly a third party.

Mr. Martin: It tells who the third party was and what relation they bore to this store.

Mr. Albert: But certainly a third party, if it please the Court, and their remarks are in no way binding upon the Fashion Originators Guild. No proper foundation has been laid with respect to the mailing of this letter. It is impossible for the respondent to cross-examine the party who wrote this letter.

Mr. Martin: If your Honor please, this witness has testified that the writer of that letter was the

New York office, who had been negotiating with the F.O.G.A. on behalf of this store's—for reinstatement.

Mr. Albert: If it please the Court, it is purely an inter-office communication, even if it is his New York office. We are not bound by the hare-brained, scattered remarks of their office boys in letters to one another. The writer of the letter doesn't even know whom he spoke to at the Fashion Originators. Guild.

Examiner Bennett: Overruled. Received.

(The papers referred to, heretofore marked for identification Commission's Exhibit 834, was received in evidence.)

By Mr. Martin.

Q. Did you, subsequent to that date, make application, your store, for reinstatement? A. We did.

Mr. Martin: I offer that as Commission's Exhibit No. 835.

Mr. Albert: No objection.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification Commission's Exhibit 835, was received in evidence.)

By Mr. Martin.

- Q. Now, as a result of your request for reinstatement, what action was taken by the Guild? A. I think the letters explain that.
 - Q. Were you reinstated? A. Yes, sir.
- Q. Were any restrictions placed upon you before you were reinstated? A. Not that I know of, except as explained in the letters.

Mr. Albert: Mr. Martin does not like the letters. Mr. Martin: Well, I offer all of those in evidence, your Honor. See if you like them.

Mr. Feldman: We like them.

Mr. Albert: Commission's Exhibits Nos. 837 and 838 are objected to, if it please the Court, as being in no manner binding upon the respondent F.O.G.A., being merely inter-office communications, being most indefinite in statements, being entirely irrelevant, immaterial and incompetent to these proceedings.

I further object to the admission of Commission's Exhibit No. 837 and 838 by reason of the fact that they refer to letters from Mr. Klein to the Affiliated Buying Corporation; that they refer to enclosures, none of which have been offered by the Commission in explanation of the specific exhibits that have been offered into evidence.

(The exhibits referred to were handed to the Examiner.)

Mr. Albert: I call your Honor's attention to the fact that not one of those exhibits specifically refer to an enclosure being returned.

Mr. Martin: I think his Honor is capable of reading it as well as you are, Mr. Albert.

Examiner Bennett: Overruled. I will receive all of them.

Mr. Albert: Exception.

Examiner Bennett: All of these documents from Commission's Exhibit No. 836, 837, 838 and 839.

(The papers referred to, heretofore marked for identification Commission's Exhibits 836, 837, 838 and 839, were received in evidence.)

9833 .

Louis E. Klein-For Commission-Direct-Cross.

By Mr. Martin.

Q. Why did you re-sign a declaration with the Guild?

Mr. Albert: That is objected to as immaterial and irrelevant.

Examiner Bennett: Overruled. You may answer.
The Witness: For the same reason that we signed it in the first place.

By Mr. Martin.

- Q. Which was? A. To secure that class of merchandise.
- Q. Have you co-operated with them since that date?

 A. Yes, sir.
- Q. You have not been red carded at any time? A. Not since that time.
- Q.—since that time? Since that date have they ever requested you to return garments as being copies? A. No, sir.

Mr. Martin: That is all.

Cross-examination by Mr. Albert.

Q. Did you turn over your files in this case to the Federal Trade Commission?

Mr. Martin: I object to that; same objection.

Mr. Albert: If your Honor please, I want to find out where these letters are that are missing here, that have not been presented.

Mr. Feldman: They are highly germane to the issues of the case.

Mr. Albert: We have six or seven letters here that have been placed in evidence, that refer to other letters, letters that have gone into evidence without the enclosure of these letters. I think I have a right to find out where they are.

Examiner Bennett: If that is the purpose, go ahead. Overruled.

Mr. Albert: Will you read the question, please? (Question read by the reporter.)

The Witness: According to some correspondence there, I believe that such is the case.

By Mr. Albert.

- Q. Did you turn over any correspondence, in addition to these letters that have been shown to you this morning? A. All correspondence, we have no correspondence left at home:
- Q. Then you turned over everything you had with the Fashion Originators Guild to the Federal Trade Commission, is that correct? A. Not exactly, I couldn't answer that statement, because they are only in possession of those letters there, as far as I know.
 - Q. Did you get a receipt from the Federal Trade Commission as to what you turned over to them? A. No.
 - Q. Have you asked for one? A. No.
 - Q. Have you a letter dated April 25 from the Fashion Originators Guild to Klein's? A. You are asking me the question?
 - Q. Yes. A. I answered you before by stating the fact that we had no correspondence whatsoever in our files at the present time.

9840

Mr. Albert: I ask the Federal Trade Commission to produce a letter dated March 21 from Fashion Originators Guild to Klein's, Peoria, Illinois.

Mr. Martin: The Federal Trade Commission replies that it has not the letter, and it has never been in its possession, and therefore it cannot produce it.

I will further, for the benefit of counsel, read from a letter to Klein, or, rather, a letter from Klein to the Federal Trade Commission investigator under date of December 16th.

Mr. Albert: Not unless you are going to put it in evidence, or offer it.

Mr. Martin: All right. Read it, then, for your own information.

(Handing document to Mr. Albert.)

Mr. Martin: I have no objection to putting it in evidence. If you want it, I will put it in.

Mr. Albert: I offer the letter in evidence.

Mr. Martin: All right.

Examiner Bennett: All right. It may be received.

(The letter referred to was marked Respondents' Exhibit 74 and received in evidence.)

Mr. Albert: I call upon the Commission to produce letter dated March 23rd from Klein's to the Fashion Originators Guild as referred to in Commission's Exhibit 830-A.

Mr. Martin: If your Honor please, I reiterate my statement, that those letters are not and never have been in the Commission's possession, as is shown by Respondents' Exhibit No. 74 in evidence, all correspondence which has been in the hands of the Commission relative to this store is now in evidence.

9843

9842

By Mr. Albert.

- Q. Mr. Klein, if we may interrupt your reading of the newspaper, have you got such a letter? A. No, sir. As I said before, we have no correspondence whatsoever.
- Q. In other words, you destroyed the correspondence, or threw it out, or it is missing?

Mr. Martin: Objected to as irrelevant and immaterial.

9845

Mr. Albert: Since when is the destruction of any evidence immaterial?

Examiner Bennett: I will let him answer.

By Mr. Albert.

Q. What happened to the letter, do you know? A. What letter are you talking about?

Q. Letter of July 7th, from your firm to the Affiliated Buying Corporation. A. All letters that were in the file at the time were turned over to the Federal Trade Commission.

Q. Was that letter in the file at that time? A. You will

have to search me. I wasn't there.

Q. So you haven't the slightest idea of what you turned over to the Federal Trade Commission, have you? A. That's right.

Q. One way or the other? A: All letters at the time, referring to the mail that was in our possession at the time, were turned over to the Federal Trade Commission.

Q. Has anybody in Klein's at a record of the letters that you turned over to the Federal Trade Commission?

A. I doubt it.

Mr. Martin: That is objected to, your Honor. This witness has testified three times in a row, under constant repetition by Mr. Albert, that all correspondence that they had was turned over to the Federal Trade Commission.

Now, I submit that is a full and complete answer.

Mr. Albert: Very full and very complete, and very enlightening.

I call upon the Commission to produce letter dated July 26, from the Klein store to the Affiliated Buying Corporation.

Mr. Martin: I have no further statement to make, your Honor. I have made all the statements on this line of questioning propose to make.

Mr. Albert: Am I to presume--

By Mr. Albert.

Q. What is your name? A. Klein.

Q. Am I to presume, Mr. Klein, that you know nothing about the whereabouts of the letter of July 26th from the Klein store to the Affiliated Buying Corporation?

Mr. Martin: Objected to as irrelevant and immaterial, and already having been answered.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Klein, the Klein store subscribes to an ethical practice in the conduct of its business, does it not? A. It does.

Mr. Martin: Objected to as irrelevant and imma-

Examiner Bennett: I will let him answer.

Mr. Martin:>You may answer.

The Witness: I did answer.

By Mr. Albert.

Q. And you subscribe to the policy of honest dealing with your customers and with your manufacturers, that is, on both ends?

Mr. Martin: Same objection.

Examiner Bennett: I will let him answer.

Mr. Martin: Go ahead. -

The Witness: Shall I answer?

Examiner Bennett: Yes, please.

The Witness: Yes:

By Mr. Albert.

Q. Klein's store does not affix its signature, nor permit its name to be used in connection with any written representation of it unless it sincerely believes what it subscribes to, does it? A. It does not.

Q. That is, you do not sign anything that becomes a representation of yours unless you mean what you say,

isn't that so? A. It is.

Q. And you want the public to know that you stand behind your signature whenever you put it on anything, is that so? A. We do.

Q. I show you Commission's Exhibit No. 833 and ask you what prompted you to sign the declaration of cooperation?

Mr. Martin: Objected to as irrelevant and immaterial, already having been answered.

Examiner Bennett: I will let him answer.

The Witness: You say I can answer?

Examiner Bennett: Yes, answer.

The Witness: That was answered before.

By Mr. Albert.

Q. Is that the only reason that prompted you to sign the declaration of co-operation? A. What reason?

Q. Don't you know the reason you gave? A. You said,

"What is the reason?"

Q. What is the reason that you say you answered it before? What is the reason that you gave before as to the reason that you joined the Guild? A. It is in the record.

Q. Don't you remember? Can't you repeat it? A.

Certainly, but it is in the record right there.

Q. Now I ask you to indulge me for, a moment and tell me what prompted you to sign the declaration of co-operation. A. In order to get merchandise sold by the Fashion Originators Guild.

Q. Is that the only reason that prompted you to sign that declaration of co-operation?

Mr. Martin: Objected to. He has already answered the question.

Examiner Bennett: He may answer.

The Witness: That covers a multitude of thought.

By Mr. Albert.

Q. Would you mind enlightening us a bit on that as to your thought? Be a little more specific. A. In order to secure this merchandise that we could make a profit on, in order to secure that certain type of merchandise that we handled in the store, or had handled; otherwise we would not have been able to secure that type of merchandise.

9854

Q. Is there anything else, aside from the desire to achieve the ultimate result of obtaining merchandise from Guild manufacturers, that prompted you to sign that declaration of co-operation?

Mr. Martin: That is objected to as having been answered. He has answered that same question now three times, if your Honor please.

Examiner Bennett: Read the last question.

(Question read by the reporter.)

Examiner Bennett: You may answer that. Overruled.

9855

The Witness: To secure models that we would not have been able to secure elsewhere, original designs and workmanship of the character that these type of manufacturers manufacture, these type of factories manufacture.

By Mr. Albert.

Q. Is there anything/else? A. Well, we believe that in purchasing our merchandise from these type of manufac-

turers, that we were giving our customers the best in design and modeling and value, with other such qualifications.

Q. Is there anything else? A. I think that covers a lot.

Q. Is there a possibility that you also signed the declaration in order to protect your customers when they purchased these best designs and models and everything else that you have spoken about?

> Mr. Martin: Objected to. He has already testified, and in his last answer, for the fourth time, he said that covered a lot of reasons.

Mr. Albert: This is cross-examination.

9857

Examiner Bennett: It is cross-examination. ahead. He may answer.

The Witness: Read that question again.

(Question read by the reporter.)

The Witness: Naturally, we thought we were giving our customers the best value by buying from these particular manufacturers.

By Mr. Albert.

Q. Mr. Klein, who told you to say that you signed the declaration of co-operation in order to obtain merchandise from Guil manufacturers?

Examiner Bennett: Do not answer that.

. Mr. Martin: That is objected to.

Examiner Bennett: Do not answer that. You. have not established, nor does the record indicate, nor is there anything in the record indicating, that . anybody told him to say that.

Mr. Albert: I will change the question.

By Mr. Albert.

Q. Did anyone tell you what to say-

Mr. Martin: That is objected to as immaterial.

By Mr. Albert.

Q.—as to the reasons why you signed the declaration of co-operation?

Examiner Bennett: He may answer that question.

Mr. Albert: Will you read the question to him? (Question read as follows: "Q. Did anyone tell you what to say as to the reasons why you signed the declaration of co-operation?")

By Mr. Albert.

Q. You seem to hesitate. Aren't you certain as to your 9860-testimony? A. I don't get the question.

Mr. Martin: I suggest you allow him time to answer.

The Witness: You mean at this time, or at the time I signed this declaration, or, in the interim, or when?

By Examiner Bennett.

Q. We are trying to find out whether anybody instructed you how to testify in this case to-day. A. No.

Mr. Albert: That is all I wanted to know, Mr. Klein.

The Witness: You didn't mention the time, so consequently I couldn't state the correct answer.

Examiner Benfiett: That is what he seemed to have in mind.

By Mr. Albert.

Q. I show you Commission's Exhibit 833 and ask you what was meant by you when you signed the following: "Believing the principles declared by your members and

your affiliates to be proper for the protection of the retailers and the manufacturers, we wish to go on record as to our own fixed business policy"? A. So what?

Q. So what? A. Yes.

- Q. So this: You have signed a document, have you not? A. Yes.
 - Q. That is the document that you signed? A. Yes, sir.
 - Q. There is a statement in the document? A. Yes, sir.
- Q. Did you know what you were signing when you signed it? A. Yes.

Q. What did you know about what you signed when

you signed it? A. What would you like to know?

Q. Your conception of what is in that document. 9863 don't sign things without knowing what you are signing, do you? A. Absolutely not.

- Q. All right. What do you know about the meaning of that statement when you signed it? A. Exactly as stated here within the copy. That is very explicable, isn't it?
- Q. That is very explicable. In what way were you protecting the public when you signed this document?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: 1 will let him answer.

The Witness: Answer? "

Mr. Martin: Yes, sir. You may answer, if you know:

9864

The Witness: I will ask the-

By Mr. Albert.

Q. No. I am asking the questions, Mr. Klein. You answer that. A. Well, I want you to explain it. times it is difficult to answer a question when you ask one to take some encyclopedia to answer it. After all

- Q. If you think you are capable of writing or speaking as an encyclopedia, do so. A. That is true, but then your statement, you say how we protect our customers.
 - Q. Yes. A. That was the statement?
- Q. That is right. How do you protect your customers when you signed that declaration? A. Why, selling them original styles that we hope that no one else will have a copy of.
- Q. And was that what prompted you in any way to sign that declaration of co-operation?

Mr. Martin: Objected to. He has already answered that question, not once, but a dozen times.

Examiner Bennett: I will let him answer.

9866

Mr. Albert: For the thirteenth time. He has been caught in a position now where he has to change his answer, your Honor. I submit that that is the object of cross examination. I am not bound by what the witness tells me on cross-examination.

Mr. Martin: I move that that latter remark be stricken. There is no evidence here that he has been caught in a position where he has got to change his testimony.

Examiner Bennett: Overruled. Homey answer.

The Witness: Let me have the question again.

Mr. Albert: Would you mind reading the last answer and then the question which followed?

(The record was read.)

The Witness: That is one of the reasons.

9867

By Mr. Albert.

- Q. Exactly. That is all I wanted, Mr. Klein. So that is an additional reason to the one that you previously stated, is that so? A. Exactly.
- Q. Would you mind explaining what was your conception of the necessity of protecting your customers from

having the original designs of dresses which they purchased in your store copied by others?

Mr. Martin: Objected to as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: I will let him answer, if he can answer it.

The Witness: Repeat that question again.

(The question was read.)

The Witness: We found that many women expected in higher-priced garments to have styles that would not be able to be purchased elsewhere for less. Is that the question—is that the answer?

9869

By Mr. Albert.

Q. Yes. And those dresses that were purchased elsewhere, was it your conception were copies of the original designs that you had at a higher price?

Mr. Martin: Objected to, not proper cross-examination.

Examiner Bennett: Overruled. You may answer.

The Witness: Yes, sir.

By Mr. Albert.

Q. Would you say that this copying of dresses that you had at a higher price was an evil of the industry at that time?

Mr. Martin: Objected to as irrelevant and immaterial to the issues in this case.

Examiner Bennett: I will let him answer. The Witness: Yes.

By Mr. Albert.

Q. And was not that evil at that time injuring your business? A. Yes.

9871

Mr. Albert: No further questions.

Mr. Martin: That is all. Oh, just one or two questions.

Redirect examination by Mr. Martin.

Q. Where did you get this paper from originally, Mr. Klein (indicating Commission's Exhibit 833)? Was that document prepared in your office in your store? A. As far as I know, this is a copy of the declaration that I signed in New York City.

Q. Who gave you the declaration?

9872

Mr. Albert: Objected to as immaterial and improper redirect.

Examiner Bennett: Overruled.

Mr. Martin: You may answer.

Examiner Bennett: You may answer.

The Witness: The girl in the office of the Fashion Originators Guild.

Mr. Martin: That is all.

Mr. Albert: That is all.

(Witness excused.)

ALEXANDER H. MARSHALL was thereupon called as a witness for the Commission and, having been first duly 9873. sworn, testified as follows:

Direct examination by Mr. Martin.

Q. Will you state your name, residence and occupation?

A. Alexander H. Marshall; reside at 120 Beach Road,
Glencoe, Illinois. I am a lawyer, practicing in Chicago.

Q. Are you the attorney for the Michigan Avenue Guild?

A. I am

Q. How long have you held that position? A. Approximately four years, since its inception.

Q. Did you prepare the charter and by-laws at the time

of its incorporation? A. I did.

Q. There was introduced in evidence yesterday, Mr. Marshall, a contract between the Michigan Avenue Guild and the Fashion Originators Guild, which bore the date of December 17th, 1932. I haven't the exhibit here wailable. It is being photostated. But you are familiar with the exhibit which I refer to? A. I am.

Q. Was that contract prepared by you? A I collaborated in the preparation of the agreement.

9875 Q. Who did you collaborate with?

Mr. Albert: The same objection.

Examiner Bennett: Overruled. You may answer.

The Witness: With the then officers of the Guild, of the Michigan Avenue Guild.

By Mr. Martin.

Q. Was the contract finally drawn dated December 17th, 1932, the results of your collaboration with the officers of the Michigan Avenue Guild? A. Yes, sir.

Q. Was that contract then submitted by the Michigan

Avenue Guild? A. Yes, sir.

Q. Was that contract then submitted by the Michigan Avenue Guild to the Fashion Originators Guild for their 9876 approval?

Mr. Albert: That is objected to as immaterial, if it please the Court. We are now speaking about a document that is no longer in force or effect.

Examiner Bennett: Overruled.

The Witness: I don't know. I prepared the document at the request of those interested in the Michigan Avenue Guild at that time as officers and I do not know when or how it was executed.

9878

By Mr. Martin.

Q. Did you ever have any conferences with any of the officers of the F.O.G.A. prior to the signing of this agreement? A. No, I did not.

Do you recall when that agreement expired?

Mr. Albert: The document speaks for itself, your Honor. It is in evidence.

Mr. Martin: The document is not available, as counsel for the respondent has withdrawn it to have it photostated.

By Mr. Martin.

Q. Do you recall when the contract expired, Mr. Marshall? A. I think it had a life of two years, which would make it expire in December, 1934, I think.

Q. Upon the expiration of that contract was a new contract entered into immediately with the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court, as having been fully testified to by the previous witness, and the contract now referred to is now in evidence. The dates are something that is very easily comparable.

Examiner Bennett: I will let him answer.

Mr. Martin: You may answer.

The Witness: No, a new contract was not immediately executed.

By Mr. Martin.

Q. What happened when the original contract expired?

Mr. Albert: Now, if it please the Court, that is objected to as entirely immaterial. The witness for the Michigan Avenue Guild has fully testified with

respect thereto. Both contracts are in evidence and I strenuously object to the Commission wasting our time at this stage of the proceedings by putting in such cumulative evidence.

Examiner Bennett: I will overrule the objection.

By Mr. Martin.

Q. Go ahead, sir.

The Witness: May I have the question? (The question was read.)

The Witness: Negotiations were carried on for a new contract.

9881

By Mr. Martin

Q. By whom? A. Between myself and officers of the Michigan Avenue Guild and officers or agents of the Fashion Originators Guild.

Q. Where were those conferences held?

Mr. Albert: Objected to as immaterial.

Examiner Bennett: Overruled.

The Witness: Conferences were held in Chicago and there was one meeting in New York with persons representing the Fashion Originators Guild and their attorney.

By Mr. Martin.

9882 Q. Who represented the Fashion Originators Guild?

Mr. Albert: Objected to as immaterial.

Examiner Bennett: Overruled.

The Witness: Mr. Schiller was present at the meeting I refer to.

By Mr. Martin.

Q. What members of the Fashion Originators Guild were present? A. Mr. Post was present at the meeting.

- Q. Anybody else? A. I think Mr. Golby was present, but Lam not certain. He may have been present for a short time.
- Q. Who appeared on behalf of the Michigan Avenue Guild? A. Mr. Gleason, who was then the president of the Michigan Avenue Guild, and I was there as counsel for the Michigan Avenue Guild.
- Q. Do you recall when that meeting was had, Mr. Marshall? A. I couldn't place it definitely except to say that it was some time between December, 1934 and May, 1935.
- Q. Well, was it in January? Do you recall, or can you place it as to the month? A. I don't think so. I don't recall. It was somewhere in that period of three or four months.

9884

Q. Well, had these conferences that you had in Chicago preceded the New York meeting?

Mr. Albert: Objected to as immaterial. What difference does it make?

Examiner Bennett: Overruled. You may answer. The Witness: I believe they had.

By Mr. Martin.

Q. Now, after the expiration of the previous contract and prior to the adoption of the existing contract which is Commission's Exhibit No. 5, were any other contracts submitted by the Michigan Avenue Guild to the Fashion Originators Guild?

9885

Mr. Albert: Objected to as immaterial.

Examiner Bennett: Overruled.

The Witness: Not that I recall.

By Mr. Martin.

Q. This is the only one that was submitted to them (indicating)? A. Well, that I don't know. I don't know

that it was submitted. It represented the results of our meeting, discussion, and it was drafted. I don't recall whether my office drafted it or whether Mr. Keller's office drafted it, but it was not drafted—it was executed without any further changes. That represented the substance of the understanding.

Q. What took place? You say that this contract was either by your office or Mr. Keller's as a result of these conferences and negotiations. What took place at these conferences? What took place, we will say, at the New York conference?

9887

Mr. Albert: That is objected to, if it please the Court, as wholly immaterial and irrelevant, as to what was said at these conferences. What was said is contained in the contract.

Examiner Bennett: Well, I will let him answer, if he recalls.

The Witness: Well, frankly, I don't recall all that was said. There was a lot of conversation, discussion, of the provisions of the old contract, and discussion of the provisions, proposed provisions.

By Mr. Martin.

Q. Was there—excuse me. I didn't mean to interrupt you. A. I am through.

Q. Was a renewal of the old contract acceptable to the 9888 F.O.G.A.?

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial, as irrelevant.

Examiner Bennett: I will let him answer.

The Witness: Well, I don't know that I can answer that. My recollection is that it was felt on both sides that the old contract was inadequate for the conditions as they existed at this time,

namely, in 1935, due to the fact that the law had changed and the N.R.A. was on the way out and the conditions were generally changed, and there was a feeling, I think, on both sides that the contract should be replaced by a different form of contract and——

By Mr. Martin.

And this contract was the result of those negotiations (indicating Commission's Exhibit No. 5)? A. Yes.

Q. Referring to page 2 of Commission's Exhibit. No. 5 and the numbered paragraph 1, which reads as follows: "Fashion Guild members will not sell their merchandise within the City of Chicago to such retailers as are not members in good standing of the Michigan Avenue Guild and/or to those retailers who do not observe the code of fair competition in the industry and whose practices do not conform to the standards and regulations of the Michigan Avenue Guild," wasn't the N.R.A. still in effect when this contract was adopted? A. I think it was.

Q Web, then, the conditions which you refer to were not changed by the status of the N.R.A. then, was it?

Mr. Albert: Objected to, if it please the Court, as being cross-examination of his own witness.

Examiner Bennett: I will sustain an objection to that question.

9891

By Mr. Martin.

Q. What other conditions had arisen which you referred to?

Mr. Albert: That is objected to, if it please the Court, as no proper foundation has been laid. The gentleman on the stand is a lawyer, not a manufacturer or a retailer.

Examiner Bennett: Overruled.

The Witness: Why, referring to trade conditions generally. For example, we had inquired of F.O.G. whether they felt they could properly confine the sales of their merchandise to M.A.G. members, and they advised us that they could not do so upon advice of their counsel. And consequently the paragraph you have referred to as paragraph 1 took the form that it did, so that there would be no confinement of merchandise, and it left the F.O.G. free to sell merchandise to many shops in Chicago who were not members of the M.A.G.

9893

By Mr. Martin.

Q. Were there any other conditions? A. I don't recall.

Q. Now, reading further, this paragraph L refer to goes on: "And/or to those retailers who do not observe the code of fair competition in the industry and whose practices do not conform to the standards and regulations of the Michigan Avenue Guild. This provision is not to apply to such stores as are named in this hereto attached Exhibit A and hereby made a part hereof." Why were those stores listed in that exhibit?

Mr. Albert: That is objected to.

By Mr. Martin.

9894

Q. (Continuing) Excluded from the agreement?

Mr. Albert: That is objected to.

By Mr. Martin.

Q. (Continuing) From that provision?

Mr. Albert: That is objected to, if it please the Court. With all due respect to the witness, upon

the ground that he is incompetent to testify with respect thereto.

Examiner Bennett: Overruled.

Mr. Albert: The proper party to testify with respect to that were the members of the Michigan Avenue Guild and its executive secretary, who was here before on the stand; and, in addition, may I remark, Mr. Martin, that the witness on the stand is an attorney and has a right to plead his professional privilege if he so desires.

Mr. Martin: I would like to call to your Honor's attention that the executive secretary of the Fashion Originators—of the Michigan Avenue Guild was on the stand and was asked the same question which I am now asking Mr. Marshall, and he replied that he did not know.

Examiner Bennett: I will let him answer, if he knows.

The Witness: I don't know. It was understood between the

By Mr. Martin.

Q. Go ahead, answer. A. It was understood between the officers of the two organizations that this list was to be set up in Exhibit A for the reasons best known to themselves and I followed their instructions in adopting that list.

Q. Did Mr. Fletcher—was Mr. Fletcher present at any of these conferences? A. No, he was not.

Q. What officers of the Michigan Avenue Guild would know it? A. Well, the only officer who was then present was Mr. Gleason, who was then president of the Michigan Avenue Guild.

Q. He didn't communicate to you his reasons for making that exception? A. Well, I could only surmise. I don't recall any precise communications to that effect.

9896

- Q. What was your surmise? A. That the sources named in this exhibit were in an entirely different merchandising category and had problems that were entirely different from the problems of those shops which were members of the Michigan Avenue Guild, and that they did not desire the protection—that the shops which are members of the Michigan Avenue Guild—and that it was not necessary to have them in the agreement or subject to the agreement.
- Q. Do you know whether or not those stores are shopped by the Guild shopper? A. I do not.
- Q. Do you know whether or not those stores are required to return garments as being copies? A. I do not of my own knowledge.

Q. None of the stores, I take it, are members of the Michigan Avenue Guild? A. No, they are not.

- Q. Did the original contract between the two organizations include Evanston merchants, retailers? A. My recollection is that it did not do so expressly, but it was our impression—that is, it was the Michigan Avenue Guild's impression that it did include the Evanston shops, and there was some question later which developed as to whether it did or did not include the Evanston shops.
- Q. What question arose later? A. The organization of a separate organization by the Evanston group.
- Q. Have they a separate organization now? A. I don't know whether they have now, but they indicated—several of the Evanston shops indicated that they preferred not to be members of the Michigan Avenue Guild, but to have their own organization—retail organization of that type.
- Q. And they are not now members of the Michigan Avenue Guild? A. I understand that there are one or two shops located in Evanston which have seen fit to continue their membership in the Michigan Avenue Guild.
- Q. Now, during that period of time from December, 1934, up to the adoption of the present agreement, dated the 10th day of May, 1935, did the Michigan Avenue Guild

9899

co-operate with the F.O.G.A.? A. In the sense that I understand your use of the word "co-operate," I would say that there was a measure of co-operation, because there was the expectation that the relationship would be continued in whatever new form it took in the new contract.

Q. What do you mean by the language of paragraph Four on page 3: "The Michigan Avenue Guild and its members agree that they will not purchase ready-to-wear merchandise from those manufacturers who shall not strictly observe the code of fair competition in the industry, and particularly those relating to working hours and minimum wage scales, and whose practices do not conform to the standards of ethics and regulations of Fashion Guild within the price and merchandise lines of Fashion Guild"?

9902

Mr. Albera: That is objected to, may it please the Court. The agreement speaks for itself and the witness on the stand, in addition, is incompetent to testify with respect thereto, as to what is meant. The only proper parties who can interpret that agreement, as to what is meant, are the parties to the agreement, in so far as the present line of inquiry is concerned.

By Examiner Bennett.

Q. Have you any knowledge as to how that was interpreted? A. I have not.

9903

By Mr. Martin

Q. Do you attend the meetings of the Michigan Avenue Guild, Mr. Marshall? A. Most of them.

Q. Are the minutes prepared by you, or under your instruction? A. In their final form, they are prepared from the minutes, under my instruction.

Alexander H.Marshall—For Commission—Direct—Cross. Edgar Leighty-For Commission-Direct.

Mr. Martin: That's all, Mr. Marshall.

Mr. Albert: Just two questions, Mr. Marshall.

Cross-examination by Mr. Albert.

Q. Isn't it a matter of fact, Mr. Marshall, that the reason why the State Street stores were excepted from the agreement, being Commission's Exhibit No. 5, was by reason of the fact that State Street stores did not demand the same protection that is included in that agreement? That was my understanding.

Q. Isn't it a matter of fact, to your knowledge, that the State Street stores have signed declarations of co-operation 9905 with the Fashin Originators Guild? A. I have been so informed. That is my understanding.

Mr. Albert: That's all.

Mr. Marcin: That's all. No further questions. Thank you, Mr. Marshall,

(Witness excused.)

AFTERNOON SESSION-2 P. M.

Examiner Bennett: Be in order, please. may proceed.

Mr. Martin: Mr. Leighty, will you come around, please, sir?

Examiner Bennett: Will you be sworn, please?

EDGAR LEIGHTY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. Martin.

9906

Q. Will you please state your name and residence? A. Edgar R. Leighty, Glenview, Illipois.

Q. What is your occupation, Mr. Leighty? • A. I am one of the divisional merchandise_men, AMarshall Field & Company.

Q. Which departments? A. I have charge of the base-

ment section.

Q. How long have you been in charge of the basement?

Q. What did you do prior to that? A. I merchandised .

the women's apparel, wearing apparel.

Q. How long did you occupy that position? A. A matter of about four years.

Q. Are you familiar with the Fashion Originators Guild

of America? A. Yes, sir.

9908

Q. Has Marshall Field & Company ever signed a declaration of co-operation with the Fashion Originators Guild? A. Yes, sir.

Q. Do you recall when they signed that? A. I can't re-

call the date.

Q. Can you recall approximately? A. Well, it was very shortly after the Guild came into existence. I would say a matter of three or four years ago.

Q. Is your declaration of co-operation with the Fashion Originators Guild still in effect at this date? A. It is.

Q. Since the date of your original signature to the declaration, have you co-operated with the Fashion Originators Guild? A. We have.

Q. Does the Fashion Originators Guild Shopper shop

Marshall Field's store? A. Undoubtedly.

9909

- Q. Have you ever been requested by the Fashion Originators Guild to return any dresses as being copies? A. Yes, sir.
 - Q. Did you return them? A. Yes, sir.
 - Q. You have never been red carded? A. No, sir.

Mr. Martin: Mark these for identification Commission's Exhibits 840 and 841.

(The documents referred to were marked Commission's Exhibits 840 and 841, respectively, for Identification.)

By Mr. Martin.

- Q. I hand you Commission's Exhibit No. 840 for Identification and ask, can you identify that letter, or that exhibit? A. Will you repeat the question, please?
- Q. Can you identify that paper? A. No, sir, I cannot as a matter of fact.
- Q. Have you ever seen it before? A. I have seen a copy of it before. I was not present at the time.
- 9911
- Q. Can you tell me what that paper is, what it purports to be? A. This happened February 17, 1936. I was not at the store at the time, I don't even know anything about it.
- Q. Have you ever seen it? A. I saw a copy of it in the press.
- Q. Where? A. I think in "Women's Wear."
- Q. You have never seen a copy of it in Marshall Field's files? A. No, I have not.
- Q. I hand you Commission's Exhibit No. 841 for Identification and ask, can you identify that? A. That, also, I have seen in the press. That is my only knowledge of it.
- Q. Now, Mr. Leighty, if Commission's Exhibit No. 840 for Identification was sent by Marshall Field, with others, to the Fashion Originators Guild, can you tell me who in the Marshall Field organization would have been authorized to send this telegram? A. Either the manager or the general manager of the store.
 - Q. Who is the manager, or the general manager? A. At the present time, Mr. Corley. Are you interested in the set-up at that time, or at the present time?
 - Q. At that time, February, 17, 1936. A. At that time, Mr. Corley.

Q. In other words, what I am trying to find out is who, in your organization, would know about this?

Mr. Albert: May I interrupt for a moment? Is that a document allegedly sent to the F.O.G.A.?

Mr. Martin: Yes.

Mr. Albert: By Marshall Field?

Mr. Martin: With others.

Mr. Albert: If you will let me see it, perhaps we can shorten it.

Mr. Martin: I have no objection to letting you see it. Obviously, this witness cannot identify it.

Mr. Post: I have no objection to your putting those in.

Mr. Martin: All right. That is all right, then.

Mr. Albert: There is no objection to Commission's Exhibits 840 and 841 being offered in evidence, subject to comparison with whatever we have received. I don't think there will be any difficulty about it.

Mr. Martin: That is perfectly agreeable. They are not the originals. They purport to be copies.

Mr. Post: They appear to me, from my recollection, to be correct, but I want to check.

Mr. Martin: That is perfectly agreeable.

Examiner Bennett: All right. They, are received in evidence.

(The documents referred to, heretofore marked for identification Commission's Exhibits 840 and 841, were received in evidence.)

9915

9914

By Mr. Martin.

Q. Now, Mr. Leighty, referring to Commission's Exhibits 840 and 841, are you in any way familiar with the subject matter of those two exhibits? A. Yes, sir.

- Q. Will you state whether or not Commission's Exhibit 840 correctly expressed the policy of Marshall Field at that time? A. It did.
- And you were in accord with the sentiments expressed by Mr. Petree, in his letter to Mr. Post, dated February 17, which is Commission's Exhibit 841? A. Yes, sir.
- Q. Does Marshall Field belong to the Michigan Avenue Guild? A. No, sir.
- .Q. Now, Mr. Leighty, referring to Commission's Exhibit No. 5, which is the agreement dated the tenth day of May, 1935, and which is now in effect between the Fashion Originators Guild of America and the Michigan Avenue Guild, paragraph number one, on page two, reads as follows: "Fashion Originators Guild members will not sell their merchandise within the city of Chicago to such retailers who are not members in good standing of the Michigan Avenue Guild, and/or to those retailers who do not observe the code of fair competition in the industry, and whose practices do not conform to the standards and regulations of the Michigan Avenue Guild. This provision is not to apply such stores as are named in the list hereto attached as Exhibit 'A' and hereby made a part hereof." Exhibit A contains the name of Marshall Field & Company. Do you know why that exception was made? A. No, I do not know why they made it.
- 9918
- Q. With reference to Commission's Exhibit No. 841, with which you have expressed yourself as being in sympathy with, and Commission's Exhibit No. 840— A. Yes.
- Q. I note the following language: "It was the original understanding of these stores"—that was the New York stores—"that they would not knowingly buy copies of Guild merchandise"—meaning copies of dresses costing the retailer \$16.75 and up—"these stores stand ready to cooperate with the manufacturer on a plan for the design and protection of better dresses, but they reserve the right to

continue to buy and sell all merchandise below the \$10.75 cost price range in accordance with their own established policies." Have you continued to reserve that right? A. No, sir, we have co-operated with the Guild in the attempt to stop piracy, going below the \$10.75 price line. The original agreement setting a price limit—that agreement was later changed, so that the field was extended down into a very much lower price field.

- Q. Do they still shop your lower-priced lines? A. Yes, sir.
- Q. Do you return copies in the lower price lines? A. We returned a number of copies in a very much lower-priced line.

Q. When did you change your policy as expressed Eebruary 17th, 1936, in Commission's Exhibit No. 840?

Mr. Albert: If it please the Court, there is no such testimony in evidence. Commission's Exhibit No. 840 specifically reserves the right in Marshall Field & Company to take action as a result of the fact that the paragraph says: "Without knowing all of the details of the present controversy." And that is only a qualified expression of policy as regards the telegram.

Examiner Bennett: Overruled. You may answer.

By Mr. Martin.

9921

9920

Q. Go ahead, Mr. Leighty. A. Pardon me.

Q. When did you change your policy as expressed in that letter? A: I don't—you will have to point out to me where there is any sign of changed policy.

Q. Here is what I am referring to, Mr. Leighty (indicating). This letter, which is Commission's Exhibit No. 840—•A. Right.

Q. Says that without knowing all of the facts you find yourself in full sympathy with the position as outlined in

the letter, which is Commission's Exhibit No. 841. A. All right.

Q. And that letter stated that it reserved to itself—continued to buy and sell all merchandise below the \$10.75 cost price ranges. Now, when did you change your opinion and start to co-operate with the Guild in all price lines? A. I couldn't give you the exact date when the matter came up. It wasn't done at any one time, or when we originally agreed to co-operate, there was a price, a bottom price established.

Q. I see. A. As we went along from month to month, why, the Guild manufacturers took in a lower-priced group of manufacturers, and our sympathy was entirely in accord with the Guild, covering the Guild just as far as they could organize it. And it was—I think our sympathy and our thought, even from the time that we first agreed to co-operate with the Guild was the same. I don't think we ever changed our viewpoint.

Q. Does this telegram change that in any way (indicating Commission's Exhibit No. 840)? A. This telegram I would say referred undoubtedly to the controversies that had arisen regarding other things than stopping style piracy, and there were things that were done by the Guild that we were not in accord with, but we were in accord with them entirely on the style piracy proposition.

Q. Well, now, what were some of those things that the Guild did other than style piracy that you were not in sympathy with?

Mr. Albert: That is objected to, if it please the Court, no proper foundation has been laid.

Examiner Bennett: I will let him answer, if he knows. You may answer.

The Witness: Our objections were on the basis of the attempts of the Guild to stop retailers from accepting special advertising allowances that were being made to the retailers.

9923

By Mr. Martin.

- Q. Any others? A. Also we raised objections, or we were not in sympathy with their attempt to organize the manufacturers on the basis of universal terms.
- Q. Any other objections? A. Those are the only two that occur to me at the moment.
- Q. Again referring to Commission's Exhibit No. 5, paragraph one of page two, referring to the refusal of the Guild to sell to merchants whose practices do not conform to the standards and regulations of the Michigan Avenue Guild—do the practices of Marshall Field & Company conform to the standards and regulations of the Michigan Avenue Guild?

9926.

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial and irrelevant. Marshall Field & Company have testified that they have signed the declaration of co-operation, that they have been co-operating. Is it Mr. Martin's attempt by that question to contradict this?

Mr. Martin: No, I am not trying to contradict him.

Examiner Bennett: I think Marshall Field qualifies in the other class. I will sustain the objection.

Mr. Martin: If your Honor please, the reason I wanted to bring that out was because this witness testified that he did not know why they were made an exception of.

9927

Examiner Bennett: They seem, in fact, to have signed the declaration, and they are living up to it rather meticulously, I think that is covered by the early part of that.

Mr. Martin: Very well, sir.

By Mr. Martin.

- Q. Has the Guild shopper shopped your store recently, Mr. Leighty, if you know? A. Well, I have been out of the sixth floor, where most of that work was done, for the last seven months, so I am not in a position to know that.
- Q. Has any shopping been done in the basement? A. Yes.
- Q. Recently? A. I couldn't tell you how recently. There have been no cases of copies called to our attention recently.
 - Q. No returns have been made? A. That is correct.

9929

Mr. Martin: All right. That's all, thank you, sir.

Cross-examination by Mr. Albert.

creation.

Q. Mr. Leighty, you have mentioned the term "style piracy." Would you mind explaining what the conception of Marshall Field & Company is with respect to style piracy?

Mr. Martin: Objected to, as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: I will let him answer.

Overruled.

The Witness: Why, for years manufacturers

have been taking original creations, or creations that were made by some individual designer, and have been reproducing them, and, as a result of the reproduction, where they had no overhead, designing overhead, they were able to make these reproductions in many cases just as good, and sell them for less money, and in many cases make them very

much poorer and ruin the value of the original

9931

By Mr. Albert.

Q. And would you say that what these manufacturers copied of the original creation was the style——

Mr. Martin: That is objected to.

By Mr. Albert.

Q. (Continuing) —the design of the dress?

Examiner Bennett: Overruled. The Witness: Will you read it?

(Question read as follows: "Q. And would you say that what these manufacturers copied of the original creation was the style, the design of the 9933 dress?")

The Witness: Yes, sir.

By Mr. Albert.

Q. And is it the belief of Marshall Field & Company that the original designs which they purchased from some manufacturers were lessened in value to Marshall Field & Company as a result of this copying thereof?

Mr. Martin: Objected to. There is no foundation laid that they ever had any original.

Examiner Bonnett: I will overrule the objection.

The Witness: Very definitely, yes.

9933

By Mr. Albert.

Q. And from your experience in the dress industry, what is your definition of what is an original design?

Mr. Martin: Objected to.

By Mr. Albert.

.Q. (Continuing) -As the term was used by you.

Mr. Martin: Objected to, as irrelevant and immaterial to the issues of this case.

Examiner Bennett: I will let him answer.

By Mr. Albert.

Q. That is, you have described these manufacturers as originating designs. What did you mean by that? A. An original design is one that has been created by an individual, usually a paid designer.

Q. And it is his inspiration? A. Right.

Q. And do you mean by "copying," that manufacturers who copy these originals merely adopt the inspiration of the original manufacturer? A. Yes, sir.

Q. Instead of attempting to create their own inspiration? A. Right.

Q. Was this copying of original designs an evil at the time that you signed the declaration of co-operation?

Mr. Martin: That is objected to as irrelevant and immaterial, not properly a matter of crossexamination. That is a question more properly brought out in the respondents' defense.

Examiner Bennett: Will you read the question, please?

(Question read by the reporter.)

Mr. Alberts The direct examination, your Honor, brought forth the fact that they signed the declaration, and I believe, in the light of the facts we all know the contents of the declaration, it is proper cross examination to have this witness testify as to the conditions that existed at the time the declaration was signed.

Examiner Bennett: He was not asked as to why he signed it, or the conditions. I will sustain the objection. You may have an exception.

Mr. Albert: Exception.

By Mr. Albert.

Q Are you familiar with the declaration of co-operaion, Mr. Leighty, have you seen it? A. Yes, sir.

Q. I show you Commission's Exhibit 833, which is a orm of declaration of co-operation and ask you if you will plain what you meant when you signed the declaration ontaining this language?

Mr. Martin: I object.

9938

By Mr. Albert.

Q. (Continuing) (Reading): "And we will remove uch copied garments from the market and, to discourage tyle piracy, and the predatory practice of copying." What was the predatory practice of copying to which you aid reference when you signed the declaration?

Mr. Martin: Objected to, as irrelevant and immateral, not proper cross examination.

Examiner Bennett: I will sustain the objection to that line. It was not gone into on direct.

Mr. Albert: Exception, your Honor.

Examiner Bennett: We have been over that with several witnesses.

Mr. Albert: May I ask the Court's indulgence for a moment?

Examiner Bennett: Certainly.
(Short interruption.)

By Mr. Albert.

Q. I show you Commission's Exhibit 840, Mr. Leighty, and ask you if you were present at any conference that was held prior to the signing of that telegram?

Mr. Martin: Objected to. The witness has already testified that the first time that he ever saw that telegram was in "Women's Wear."

Examiner Bennett: Read the question, please. (Question read by the reporter.)

Examiner Bennett: I will let him answer. The Witness: No, sir.

9941 By Mr. Albert.

Q. Now, after the sending of that telegram, are you familiar with any of the communications or correspondence that passed between Marshall Field & Company and the F.O.G.A., with respect to the subject matter thereof? A. Yes, sir.

Q. Mr. Leighty, do you not know that the stores listed on Commission's Exhibit 840, at the time the telegram was sent, and at the present time, in the same manner as Marshall Field is doing, have affixed the Guild warranty stamp upon all orders, and all price lines?

Mr. Martin: That is objected to, as irrelevant and immaterial. The witness has already testified he was not present at any conference, that he never saw that telegram, and knows nothing about it, except what he read in "Women's Wear." It is obviously not within his knowledge as to what other stores are doing.

Examiner Bennett: Read the question.

(Question read by the reporter.)

Examiner Bennett: I will sustain the objection. That is very evidently outside of his knowledge.

By Mr. Albert.

Q. Do you know, Mr. Leighty, that Commission's Exhibit 840 was sent as the result of a telephone call from Mr. Schweitzer, of the N.R.D.G.A.?

Mr. Martin: Objected to. The witness has stated he knew nothing about its being sent, he had never seen it before. That the first he saw of it was in "Women's Wear."

Examiner Bennett: I will let him answer if he wants to bring it out.

The Witness: Read the question, please. (Question read by the reporter.)

A. I do not.

9944

By Mr. Albert.

Q. And do you not know, Mr. Leighty, that the telegram was sent in reliance upon the telephonic summary by Mr. Schweitzer of Mr. Petree's letter, and that the inclusion of the preliminary statement "without knowing all the details of the present controversy" was by reason of the fact that the letter specifically had not been seen by the signatories to the telegram?

Mr. Martin: That is objected to. The witness has already testified he did not know.

Examiner. Bennett: I will sustain the objection. I think the facts can be brought out from some other source. I think the attorney had better not try to build up a record in that way, on the facts.

9945

By Mr. Albert.

Q. Since the sending of that telegram, Commission's Exhibit 840, have you not learned, in the ordinary course of your business, that many of the signatories thereto were

Edgar Leighty-For Commission Cross.

not and are not in sympathy with the letter therein referred to?

Mr. Martin: Objected to.

Examiner Bennett: I will sustain the objection to that. You may ask him as to Field's store.

Mr. Albert: Exception, your Honor.

Examiner Bennett: He has testified they were in sympathy with it.

By Mr. Albert.

·Q. Have you, since the sending of that telegram, learned of the manner in which it was sent?

Mr. Martin: That is objected to. He has already testified he did not know.

Mr. Albert: He did not know at the time, your Honor.

Mr. Martin: You asked him several questions after that relative to it, and he testified he did not know.

Mr. Albert: If the witness says he does not know, your Honor, it will certainly take less time than the objection of counsel.

Mr. Martin: I renew my objection.

Examiner Bennett: I will sustain the objection I think the sending of the telegram does not seem to have been questioned. The signatures do not seem to have been questioned. The document speaks for itself. The witness has told what he knows about the circumstances.

Mr. Albert: Very well, your Honor. We will bring out all these circumstances with respect to it in direct, if we have to go into direct.

Examiner Bennett: I think you can get somebody who has a more direct connection with it.

Mr. Albert: Very well.

By Mr. Albert.

Q. You testified that for some time no copies have been found or reported to you by the Guild shopper in the Marshall Field store? A. Pardon me. I did not so to tify.

Q. I am sorry. What was it that you testified to with respect to that? A. The question was asked me regarding the shopping at the present time, whether shoppers were coming into the store.

Q. And your testimony was what? A. And I said I had been in the basement for the last seven months, and my contact is entirely in the basement, and, as I answerd the question, it referred to the basement, or the lower price lines only.

Q. And that there had been not many copies returned from the basement, or found in the basement? A. The basement only.

Q. As a result of your experience in the dress industry, and with Marshall Field & Company, and with the Guild program, would you say that this improvement in the fact that there were no copies found in the basement was a result of the Guild program?

Mr. Martin: Objected to. Not proper cross-examination.

Examiner Bennett: I will let him answer.

The Witness: It very definitely is the result of the Guild's operation.

9951

9950

By Mr. Albert.

Q. Would you say that that has been a benefit to Marshall Field & Company? A. Very much so.

Q. Would you say that that was a benefit to the public?

Mr. Martin: That is objected to.

Edgar Leighty-For Commission-Cross-Redirect.

By Mr. Albert.

Q. In your experience, in that they are protected from copies?

Examiner Bennett: I don't think he is qualified to answer that.

Mr. Albert: Exception, your Honor. That's all.

Redirect examination by Mr. Martin.

Q. Have ou ever seen an original design? A. Yes, sir. o

Q. How do you know it was an original design? A. Well, I have seen a design that was created by an individual, who in my mind didn't do anything else but create.

Q: You are certain that it was original? A. I certainly would assume that it was original.

Q. Do you know where this particular designer might have gotten her ideas? A. Might have gotten them?

Q. Yes, sir. A. Well, I would say she got them out of the back of her head.

Q. Do you know as a matter of fact that she did not copy them from some other dress which you might not have seen? A. I couldn't prove it.

Q. You couldn't prove it either way; could you? A. (Witness shakes head negatively.)

Mr. Martin: That is all.
 (Witness excused.)

(Thereupon, at 3.00 o'clock P. M., the hearing in the above entitled matter was adjourned until further notice, time and place of the next hearing to be set by the Examiner or the Commission.)

9954

Charles F. Roycroft-For Commission-Direct.

9955

Room 401, United States Appraisers Store Building, Baltimore, Maryland, November 9, 1936.

Met, pursuant to notice, 1 P. M.

Before: EDWARD M. AVERILL, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., M.-A.
ALBERT, Esq., and HERBERT S. KELLER, Esq. (1450
Broadway, New York City, N. Y.), appearing for the
Fashion Originators Guild of America.

FORREST BRAMBLE, Esq., of Barton, Wilmer, Addison & Semans, 806 Mercantile Trust Building, Baltimore, Md., appearing for Baltimore Ladies' Ready to Wear Guild of Baltimore, Inc.

CHARLES F. ROYCROFT was thereupon called as a witness for the Commission and, having been first duly sworn; testified as follows:

Mr. Bramble: I would like to ask as a matter of information.

Examiner Averill: On the record?

Mr. Bramble: No, off the record.

(There was a discussion off the record.)

Direct examination by Mr. Haycraft.

Q. Will you state your full name? A. Charles F: Roy, croft.

- Q. Where do'you live, Mr. Roycroft? A. 3225 Ramona Avenue, Baltimore.
- Q. What is your occupation? A. In this particular connection, secretary of the Ladies' Ready-to-Wear Guild of Baltimore.
- Q. Do you have any other occupation? A. Assistant secretary of the Retail Merchants Association of Baltinore.

Q. Where do you have your office? A. 1200 Lexington Building.

Q. How long have you been secretary of the Ladies' Ready-to-Wear Guild of Baltimore? A. Since its organization during September of 1933, I think.

Q. What, if anything, did you have to do with the organization of the Ladies' Ready-to-Wear Guild of Baltimore? A. I, so to speak, arranged the meetings as a result of which the Ladies' Ready-to-Wear Guild of Baltimore was organized.

Q. At that time, were you assistant secretary of the Credit—what was that? A. Retail Merchants Association.

@ Retail Merchants Association? A. Yes, sir.

Q. Was the Ladies' Ready-to-Wear Guild of Baltimore, Inc., sponsored by the Retail Merchants Association? A. The meetings were arranged by the association. The association, I suppose you might say, sponsored the organization of the Guild.

Q. What was the action—that is, what prompted you to form that organization, the Ladies' Ready to-Wear Guild of Baltimore, Inc.? A. As I recall, a number of the members of the Retail Merchants Association received from the Fashion Originators Guild a communication outlining its activities in connection with the Anti-Piracy-Act, I believe it is, as a result of which several of them contacted the office of the association, and we arranged for a meeting of all local retailers who had received such letters.

- Q. And approximately when was that meeting held in relation to the organization meeting of the Guild? By "uild," I mean Ladies' Ready-to-Wear Guild of Baltimore? A. A matter of several weeks, I would say, during the fall of 1933.
- Q. Do you have any recollection of who the prominent members were that attended that meeting that you speak of, that first meeting? A. For the most part, I think it was the department store people and several of the specialty stores, women's specialty stores. Just who the individuals were I could not tell you, without reference to the minutes.
- Q. What occurred at that preliminary meeting? A. A general discussion as to the policies, you might say, or aims of the Fashion Originators Guild, as we knew them. There was only a handful of people there and, subsequently, or, at least, it was decided at that time to arrange for a subsequent meeting.

Q. When you say "handful," could you give us a better estimate than that? A. I would say possibly somewhere around eight, possibly ten people.

Q. Was there anyone called upon to explain the purpose of the meeting? Did you do that yourself, or who? A. No, no, the members themselves, speaking now as members of the Retail Merchants Association, explained what they knew, and that was, as far as I know, all of the information we had, and we subsequently decided to have this further meeting.

- Q. And when was the further meeting held? A. A matter of possibly a week or ten days later.
- Q. And where? A. At the Lord Baltimore Hotel, as I recall it.
- Q. Who attended that meeting? A. I cannot cite the names of the individuals, or the stores that were represented, but I do know that an invitation was sent to all

niembers of the Rétail Merchants Association handling, as I recall, Guild merchandise.

Q. That would be members of the Guild, or— A. Up to that point, they were members of the Retail Merchants Association.

Q. I will put it this way: When you say that they handled Guild merchandise, are you familiar, yourself, with the circumstances under which they handled Guild merchandise, or anything of that character? A. No. I am not familiar with the circumstances under which they handled Guild merchandise or anything of that sort.

9965

Examiner Averill: I would like to know if by that answer you are referring to the time of which you are speaking; namely, some time in September.

The Witness: September, 1933.

Examiner Averill: September, 1933. I say that because at that time, as I understand it, they were not members of the Guild.

The Witness: That is true. At that time they were not members of the Guild.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. By that you mean members of the Guild here at Batimore or New York, or either? A. The Baltimore Guild was not in existence at that time.

9966

Q. There was no Baltimore Guild then? A. No. There was no Baltimore Guild then.

Mr. Weisman: May I also make clear, and I believe Mr. Haycraft will concur in this, that at no time are any retail stores ever members of the Fashion Originators Guild.

Mr. Haycraft: No. Decidedly that is not admitted: That is a highly controversial point in this

case, Mr. Examiner. It is not admitted by counsel for the Commission that that is the fact.

By Mr. Buyeraft!

Q. And did you determine then; whether the members . that attended this meeting handled Guild merchandise?

> Mr. Weisman: I object to the form of the ques' tion. He did not say at any time that he did determine that they were handling Guild merchandise or not.

Examiner Averill: He said that they were hanhling; that is, the invitation was addressed to those who were, at that time, handling Guild merchandise.

Mr. Weisman: He did not say that he determined it.

...Mr. Haycraft: He sent out the invitation.

The Witness: I might qualify my answer. What I did, as I now recall, was to send a letter of invitation to attend the particular meeting to all members of the Retail Merchants Association who were known by me to be handling Guild merchandise.

By Mr. Haycraft.

Q. Www many attended that meeting? A. I do not recall, Mr. Haycraft. I think the minutes of the meeting \$9969 will probably show. .

By Examiner Averill.

Q. You said, in your previous testimony as L have a record of it here, "Approximately 8 or 10." A. That was the first meeting, your Honor; this is the subsequent meeting that he is speaking of now.

By Mr. Haycraft.

Q. Did anyone besides or outside of members of the Reatail Merchants Association and besides yourself, and you were an executive of the Retail Merchants Association, attend? A. Yes, Mr. Mehling, I think, the secretary of the association.

Q. Anyone else besides the secretary and the members of the Retail Merchants Association attend that meeting, the second meeting? A: No, sir.

Q. At that meeting what took place?

Mr. Haycraft: This is merely a preliminary question laying a foundation. It is of historical value, I think, if your Honor please, in developing the matter.

Examiner Averill: I will permit the witness to answer that briefly just what, generally, took place there, and we will see the import of it.

A. Merely a discussion as to the advisability of the formation of a local association and, as I recall, it was decided then to merely broaden the invitation which had gone out for that meeting. There were some preliminary discussions, I think, about the formation of a local Guild, the details of which I cannot recall just now.

Q. Did you have any communications with the Fashion Originators Guild of America at that meeting? A. No, sir.

Q. Had you had any communications with any official of the Fashion Originators Guild of America prior to that meeting? A. I had none.

Q. What occurred at that meeting with respect to any further meeting?

Mr. Weisman: Thank you.

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Mr. Haycraft: I do not think the witness, Mr. Examiner, should be interrupted when he is testifying.

Examiner Averill: Oh, I think if you have an objection, it is proper. The witness had evidently not answered the question as asked.

Mr. Haycraft: Apparently we differ on that as to whether he was answering it or not.

Examiner Averill: I cannot see why.

By Mr. Haycraft.

Q. Go ahead and answer the question. A. Arrangements were made for a further meeting to which local retailers who had signed declarations of co-operation with the Fashion Originators Guild would be invited to attend.

Q. Was such a meeting held? A. Yes, sir.

Q. Who sent out the invitations for it? A. The Retail Merchants Association.

Q. How did you ascertain what retail dealers had agreements with the Guild—that is, the Fashion Originators Guild? A. I do not recall definitely.

Examiner Averill: Gentlemen, I think we should refer to those papers which were signed at the time that the witness has testified concerning, as "Declarations of Co-operation" until such time as it is, by proper authority, determined that they constitute agreements. In other words, you can get the same information by asking the witness a question which does not force him to use the word "agreement" to characterize the paper as an "agreement." In the first place, I do not think he is competent to characterize it as an "agreement," and if it is a written instrument, certainly not.

Mr. Bramble: I think what my friend objects to here, is Mr. Haycraft's characterizing it as an 9974

Charles F. Roycroft-For Commission-Direct.

agreement when he does not believe that it is an agreement. I think it would add to the confusion to call it an "agreement" when it does not seem necessary to do so in order to elicit the testimony.

Examiner Averill: That would be obviated by adopting my suggestion by asking him how many of them signed this "Declaration of Co-operation." That is what the witness called it when he testified. Objection sustained. Exception noted for Mr. Haycraft.

By Mr. Haycraft.

- 9977. Q. This question has been amended and, as amended, would that change your answer in any way? A. No, sir.
 - Q. By that you mean you do not recall how you found out the names of the people who had signed that invitation—the people to whom you had sent that invitation? A. I do not definitely know how I found out the names of the people to whom I sent the invitation, if that is the question.
 - Q. Did you have any contact with officials of the Fashion Originators Guild of America in connection with sending out invitations for the meeting that you have just referred to? A. To the best of my knowledge, no.
 - Q. Was such a meeting held? A. Yes.
 - Q. It was? A. Yes.
 - Q. When was it held? A. A short time after the organization meeting, so to speak, was arranged, or had been held.

Examiner Averill: Can you give us a little better time than that? That seems to be a bit vague to me.

By Mr. Haycraft.

Q. Can you give us the date on that? A. The best that I can recall, it was during the latter part of 1933.

- Q. Did you keep any minutes of that meeting? A. Yes, sir.
 - Q. Do you have them here with you? A. Yes, sir.
 - Q. Will you please produce them at this time? A. Yes.
- Q. By referring to these minutes that you have just now produced, can you give us the dates of these respective meetings? A. The first meeting?
- A. September 5, 1933, is the date of the first Q. Yes. meeting.
- Q. Can you testify as to who attended that meeting? A. Yes, sir.
 - Q. Who were they? A. Mr. Charles G. Hutzler.
 - Q. What firm does he represent? A. Hutzler Brothers.
- Q. In giving the people who attended the meeting, from now on, will you give the firm that they represented? A. · Allen S. Metzger, representing Maisonannette Company: Fred H. Alperstein, representing the Gaxton Company; S. J. Schleisner, representing the Schleisner Company; M. M. Schwart, representing O'Neill & Company; Henry Weil, representing Stuart & Company; J. E. Ellington of the May Company; J. W. Mehling and C. F. Roycroft, the secretary and assistant secretary, respectively, of the Retail Merchants Association, and Mr. William R. Semans, of what is now the firm of Barton, Wilmer, Addison & Semans.
 - Q. And I assume the latter are attorneys? A. Yes.
 - Examiner Averill: That is what I understood 9981 they were.
 - The Witness: That is true.

By Mr. Hayeraft.

Q. What is the date of the second meeting? A. September 11, 1933, and there were fifteen establishments represented there, but from my minutes I cannot tell the names of the individuals, or of the establishments because there was no record made of them.

Charles F. Raycroft-For Commission-Direct.

- Q. Do you have the minutes of the meetings here for that day before you? A. Yes, sir.
 - Q. Did you prepare those yourself? A. Yes, sir.

(The minutes referred to, heretofore marked for identification Commission's Exhibit 842, were marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I notice reference is made to an agreement between the Ladies' Ready-to-Wear Guild and the Fashion Originators Guild of America, on these minutes; do you have a copy of that agreement? A. That is the one.

Q. You have a copy of it here?

Mr. Bramble: I think that is it, and I understand it is in our answer.

The Witness: No, that is a different one.

By Mr. Haycraft.

Q. Is this the one (indicating)? A. Is that mine, that you have Already?

Mr. Weisman: I believe you left yours there, Mr. Roycroft; is that not it (indicating paper)? The Witness: Yes.

Mr. Bramble: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

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By Mr. Haycraft.

- Q. What is the paper that I am handing you now, Mr. Roycroft? A. This is a copy of the original agreement between the Fashion Ofiginators Guild of America and the Ladies' Ready-to-Wear Guild of Baltimore.
- Q. And who signed it? A. Signed by J. M. Golby, as executive secretary of the Fashion Originators Guild of

America and Mr. Charles G. Hutzler, as chairman of the Ladies' Ready-to-Wear Guild of Baltimore.

·Q. The date of it, please? A. September 27, 1933.

Q. Is this the agreement referred to in the minutes that you identified a few moments ago, Commission's Exhibit 842? A. Yes, sir.

Q. Have the changes been made in this Commission's Exhibit 843 as referred to in Commission's Exhibit 842? A. Yes, because this is our copy.

(The papers heretofore marked for identification Commission's Exhibits 843-A, 843-B, 843-C, 843-D, 843-E, 843-F and 843-G, were marked as exhibits and received in evidence.)

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Examiner Averill: Off the record. (There was a discussion off the record.) Examiner Averill: On the record.

By Mr. Haycraft.

Q. When was the organization meeting of the Endies' Ready-to-Wear Guild of Baltimore held? A. On September 18, 1933.

Q. Do you have a copy of the minutes of that meeting?
A. Yes, sir.

Examiner Averill: Yes, it will only take a moment.

The Witness: The meeting was discussed atthe agreement, rather, was discussed at the meeting of September 18.

Examiner Averill: Yes.

The Witness: Signed by the individual retailers, on that date, and on subsequent dates; if you will notice from the minutes, Mr. Hutzler asked that that be signed by such individuals attending the meeting who had authority to sign it for this

firm, just such individuals sign on the 18th if they happened to be present at the meeting.

Examiner Averill: Yes.

The Witness: There were some, however, not represented at the meeting, or some firms, represented at the meeting, the representative, however, not having authority to sign.

Examiner Averill: I see. And who later signed—

The Witness: They subsequently signed it. Then, there were two copies. We refer to the agreements in here (indicating paper), indicating that they were plural. Both copies were signed by the individuals at this particular meeting. Then both copies were taken by Mr. Hutzler, as chairman of the Guild, with him to New York on his next trip, and on September 27, 1933, Mr. Golby, as secretary of the Fashion Originators Guild, officially signed this agreement, and Mr. Hutzler, then, as chairman of the Guild, signed it on September 27, the signatures of the individual Baltimore retailers having been obtained on the 18th, and the dates being the 18th and 27th.

Examiner Averill: That makes it very clear, as to how it happened.

Mr. Bramble: It explains why the difference in the dates.

Examiner Averill: Yes.

The Witness: Referring to Exhibit 844, this was subsequent to—

By Mr. Haycraft.

Q. I notice there is reference made in Commission's Exhibit 844 to articles of constitution, rules and regulations. Do you have in your possession the articles of con-

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stitution, and rules and regulations, referred to in the exhibit? A. I cannot answer that definitely.

> Mr. Bramble: I guess this is it, isn't it (producing paper)?

The Witness: No, that is the present. Mr. Weisman: That is the present.

The Witness: But this is an original set of rules, regulations, and agreements. I do not have that in my possession. I may have that available somewhere in the office. I made no effort to hold onto that, after the present rules and regulations and agreements were adopted.

Mr. Haycraft: I see. All right.

Mr. Hutzler: I think they are in the minutes.

The Witness: . The present ones. Wait a moment, what is the date there, September 18 (referring to minutes)? It is just as likely that these may be the ones, but I would not want to say definitely without having an opportunity to peruse them ...

Mr. Haycraft: Will you make a check on that so that you can testify later as to that? Will you make a note of that, Mr. Martin? - .

Mr. Martin: Yes.

Mr. Haycraft: Mr. Examiner, I think probably we can save some time if I could take about a tenminute recess to go through these minutes. I see 9993 some of the minutes have nothing to do with this proceeding.

Examiner Averill: I have no objection.

Mr. Weisman: All right.

Examiner Averill: We will take a short recess. (There was a short recess taken.)

Charles F. Roycroft-For Commission-Direct.

By Mr. Haycraft.

Q. Do you have in your possession copies of the meeting of the Ladies' Ready-to-Wear Guild of Baltimore on November 17, 1933? A. Yes, sir.

Examine Averill: What date is that? The Witness: November 17, 1933.

Examiner Averill: Proceed. However, it just struck me that that would be the fourth instead of the third one. I do not think that is correct, is it?

Mr. Weisman: The third one is in evidence as Commission's Exhibit No. 844. He is now asking for the subsequent meeting on November 17.

Examiner Averill: And not September 17th?

Mr. Weisman: No, that is November 17.

Mr. Haycraft: I asked to have this meeting of November 17th, the minutes thereof, marked with the Commission's next number for identification.

Examiner Averill: That may be done.

(Whereupon the minutes of the meeting of the Ladies' Ready-to-Wear on November 17, 1933, were marked Commission's Exhibits 845-A and B for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 845-A and 845-B 9996 and ask you if those are the original minutes of the Guild meeting; that is, the Ladies' Ready-to-Wear of Baltimore as held on that date. A. They are.

Examiner Averill: 'And what is the date of that?' The Witness: November 17, 1933.

Mr. Haycraft: That is offered in evidence, Mr. Examiner.

Examiner Averill: Gentlemen, objections as stated by counsel are overruled except, of course,

the privilege allowed if later the paper in question is not connected up, if that fact is not brought home to the charges named in the complaint, to move to strike the exhibit and any reference thereof on the record.

Of course, in moving to strike it from the testimony we would have to have a transcript of the testimony here and strike it line by line as it appears to have been immaterial or irrelevant, or whatever it may be.

With that reservation, the objection is overruled, gentlemen, to the papers heretofore marked Commission's Exhibit No. 845-A and the second sheet thereof which was marked Commission's Exhibit No. 845-B, the same being minutes of the board of control of the Ladies' Ready-to-Wear Guild of Baltimore for November 17, 1933, and the same will be received in evidence and be marked Commission's Exhibit 845-A and 845-B, respectively.

(The document heretofore marked Commission's Exhibits 845-A and 845-B for Identification, was received in evidence.)

By Mr. Hayeraft.

Q. Referring to Commission's Exhibit 845, I notice that it is the minutes of the board of control on 845-A. Just what does the board of control of the Ladies' Ready-to-Wear Guild of Baltimore represent? A. The board of control represent—the board of control of the Ladies' Ready-to-Wear Guild of Baltimore, prior to the incorporation of the organization, functioned as the board of directors.

Q. And the persons named in these minutes were part of that board of control at the time the meeting was held, that meeting? A. With the exception of the secretary.

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- Q. You were that secretary? A. Yes.
- Q. How were the members of the board of control selected? A. A nominating committee was appointed, as I recollect, and submitted its report, which in turn was presented to a meeting of the general membership at which an election took place.

Q. In these minutes of Commission's Exhibits 845-A and

B, the following appears on page 1 thereof: "Following the reading of the Committee's report, Chairman Hutzler read a letter received by him from Mr. J. M. Golby, executive secretary of the Fashion Originators Guild of America, in which Mr. Golby outlined the attitude of that organization concerning violations of the rules and regulations of local guilds." Did you receive that letter from Mr. Golby and do you have that letter in your files? A. I do not have it in my possession now. You will notice

Q. It is your testimony that this letter was returned to Mr. Hutzler, or that he retained possession of it? A. The letter was read by Mr. Hutzler at the meeting.

that it is stated that Mr. Hutzler presented the letter.

Q. It was not incorporated in the minutes? A. No, sir.

Examiner Averill: Gentlemen, I make the same raling in connection with that. Gentlemen, the papers heretofore marked Commission's Exhibits 846-A, B and C, the same being minutes of the meeting of the Board of Control of the Ladies' Ready-to-Wear Guild of Baltimore for January 25, 1934, consisting of three sheets, will be received in evidence and marked Commission's Exhibits 846-A, 846-B and 846-C, and I will permit the substitution of copies thereof in the record.

(The minutes heretofore marked for identification Commission's Exhibits 846-A, 846-B and 846-C were marked as exhibits and received in evidence.)

Mr. Haycraft: I have one or two questions about that.

By Mr. Haycraft.

Q. I notice, Mr. Roycroft, that in the minutes you have just identified reference is made to a communication received by you as secretary from Mr. J. M. Golby, executive secretary of the Fashion Originators Guild of America, suggesting that the Fashion Originators Guild be permitted to sign local retailers with the Ladies' Ready-to-Wear Guild of Baltimore: Do you have in your files the original of that communication? A. I may have, Mr. Haycraft, but I could not say definitely without first checking the files.

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- Q. Will you make such a check and, provided you can find that, produce it, please; check the files to ascertain if you can find it? A. Yes. I will get the date of it now and do so.
 - Mr. Haycraft: I ask to have the following document, consisting of four pages, marked for identification. This is minutes of the Board of Control of the Ladies' Ready-to-Wear Guild for April 9, 1934.

(The document was marked for identification Commission's Exhibits 847-A, 847-B, 847-C and 847-D.)

10005

By Mr. Haycraft. . .

- Q. I show you Commission's Exhibits 847-A, B, C and D and ask, you whether or not you can identify that as minutes of the Board of Control of the Ladies' Ready-to-Wear Guild of Baltimore dated April 9, 1934? A. Yes, sir.
- Q. Does that not bear your signature? A. Oh, yes, it does bear my signature.

- Q. Page 4 does not bear your signature? A. No.
- Q. Is that part of the minutes? A. Yes. As a matter of fact, my signature appears on page 3, and page 3 definitely ties that in. That refers to the fact that subsequent to the meeting the president appointed certain committees, and those committees are therein set forth.

Mr. Haycraft: I offer these minutes in evidence with the same stipulation as was made to previous exhibits.

Examiner Averill: Gentlemen, the same ruling which was made in the cases of the minutes heretofore received in evidence as Commission's Exhibits 845 and 846 will apply in this case, and the objection is overruled.

Mr. Bramble: And exception noted?

- Examiner Averill: The objection is overruled and exception noted. The same exception noted. The papers in question, heretofore referred to as Commission's Exhibits 847-A, B, C and D, and which purport to be the minutes of the Board of Control, Ladies' Ready to-Wear Guild of Baltimore, April 9, 1934, will be received in evidence and marked Commission's Exhibits 847-A, B, C and D, respectively.
- (The documents heretofore marked for identification Commission's Exhibits 847-A, 847-B, 847-C and 847-D were marked as exhibits and received in evidence.)

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By Mr. Haucraft.

Q. I notice on the first page of these exhibits that reference is made to a letter which Chairman Hutzler stated had been forwarded from the office of the Fashion Originators Guild of America regarding August coat sales and

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asks for an expression of opinion from some of the members regarding the elimination of August coat sales. Do you have the original of that letter in the files of the Ladies' Ready-to-Wear Guild? A. I will have to check the file, Mr. Haycraft. What is the date of that?

Mr. Weisman: It will be prior to-

By Mr. Haycraft.

- Q. Prior to April 9, 1934. A. No, it is not here.
- Q. Will you make a search for it? A. Yes.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

Mr. Haycraft: Will you mark this for identification?

(The paper referred to was marked for identification Commission's Exhibits 848-A and 848-B.)

By Mr. Haycraft.

Q. Mr. Roycroft, I show you Commission's Exhibits 848-A and B and ask you if you can identify those two sheets as minutes of the Board of Control of the Ladies' Ready-to-Wear Guild of Baltimore dated June 16, 1934 (handing paper to witness)? A. Yes, sir.

Mr. Weisman: May I see that?

10011

Mr. Haycraft: I offer in evidence Commission's Exhibits 848-A and B.

· (The witness hands paper to Mr. Weisman.)

Examiner Averin: Gentlemen, under the same circumstances that the other rulings were given in connection with these exhibits from the minutes I shall receive in evidence the papers heretofore marked Commission's Exhibits 848-A and B, pur-

porting to be minutes of Board of Control of Ladies' Ready-to-Wear Guild of Baltimore, June 16, 1934, and they will be received in evidence as Commission's Exhibits 848-A and B, respectively.

(The documents heretofore marked for identification Commission's Exhibits 848-A and 848-B were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I will ask you whether or not you can testify as to whether any of the executives of the Fashion Originators Guild of America addressed a meeting of the Ladies' Ready-to-Wear Guild of Baltimore on January 21, 1935? A. Yes, sir.

Q. Who did so? A. Mr. Post and Mr. Golby.

Q. I show you Commission's Exhibits 849-A and B, purporting to be minutes of the Ladies' Ready-to-Wear Guild of Baltimore on February 25, 1935, and ask you to identify them as such. A. I can.

Mr. Haycraft: I offer in evidence Commission's Exhibits 849-A and B.

(There was a discussion off the record.)

(The documents heretofore marked for identification Commission's Exhibits 849-A and 849-B were marked as exhibits in evidence.)

Examiner Averill: Gentlemen, the same ruling

with reference to this exhibit as to the prior exhibits, that is, Commission's Exhibits 850 A, B, C, the objection is overruled for the time being, with the exceptions already noted to counsel, of course, and the paper will be received in evidence and marked Commission's Exhibits 850-A, B, C, the same being minutes purportedly of the Board of

10013

Control of the Ladies' Ready-to-Wear Guild of Baltimore for August 5, 1935.

(The minutes heretofore marked for identification Commission's Exhibits 850-A, 850-B and 850-C were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I call your attention to Commission's Exhibits 850-A, B and C and the reference there to a new agreement presented by Mr. Hutzler, which he indicated was acceptable to the Fashion Originators Guild. Do you have that new agreement? A. Yes, sir.

10016

- Q: On the second page of this Commission's Exhibit 850-B reference is made to a communication from Mr. Post regarding the employment of a shopper for Baltimore. Do you has a the original of that communication in your possession? A. Let us see. I cannot say definitely without first checking it.
- Q. Will you please do so? In the second paragraph on this same page the statement is made that "Chairman Hutzler then presented the Fashion Originators Guild recommendations." Do you remember whether that was done in writing or orally? A. I am inclined to think it was orally or it would have been stated otherwise in the minutes.

Q. When was the present organization of the Ladies' Ready-to-Wear Guild of Baltimore, Inc., organized? A. During September of 1935.

- Q. Can you give the date? A. The first meeting of incorporation was held on Monday, September 30.
 - · Q. 1935? A. 1935.

Mr. Bramble: September 30?

The Witness: Yes.

Charles F. Roycroft-For Commission-Direct.

By Mr. Hayoraft.

- Q. Did they adopt by-laws at that time? A. Yes, sir.
- Q. Do you have a copy of those by-laws? A. Yes, sir.

Mr. Haycraft: Where is that? I think we have a mimeographed copy.

Mr. Bramble: This is the copy here. I imagine that it is.

Mr. Haycraft: Mark this.

The Witness: Here are your by-laws (indicating). You have more by-laws there.

Mr. Weisman: You want them all, do you not, Everett?

10019

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 851, which consists of fourteen pages, entitled, "By-laws, Rules, Regulations and Agreements of the Ladies' Ready-to-Wear Guild of Baltimore," and ask you if you can identify it? A. Yes, sir.

(The paper referred to was marked for identification Commission's Exhibits 851-A to N, both inclusive.)

By Mr. Haycraft.

10020

- Q. What is it? A. It is my office copy of the by-laws, rules, regulations and agreements of the Baltimore Guild.
 - Q. Adopted when? A. Adopted on various dates.

Examiner Averill: As shown on the paper? The Witness: In some instances, yes; others, no.

10021

By Mr. Haycraft.

Q. Can you testify as to when they were adopted when they do not show? A. I will be given an opportunity to check the minutes?

Q. All right.

Examiner Averill: Gentlemen, the same ruling with respect to these papers as the ones heretofore marked as Commission's Exhibits 852-A to G, inclusive, and which purport to be minutes of Ladies' Ready-to-Wear Guild of Baltimore dated September 30, 1935, and some addenda thereto, will be received in evidence and marked Commission's Exhibits 852-A to G, inclusive.

10022

(The papers heretofore marked for identification Commission's Exhibits 852-A to G, inclusive, were marked as exhibits and received in evidence.)

Room 401, United States Appraisers Store Building, • Baltimore, Maryland, November 10, 1936.

Met, pursuant to adjournment, 10.30 A. M. Before: EDWARD M. AVERILL, Examiner.

10023

(Same Appearances.)

CHARLES F. ROYCROFT resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. I will ask you whether or not you were able to locate any of the letters mentioned in your testimony of yesterday and for which you were requested to search? A. Yes. Q. What success did you have? A. You asked for six letters; I have been able to find five of the six.

Q. Which ones did you find? A. Mr. Post's letter.

Examiner Averill: Off the record just a moment.

(There was a discussion off the record.)

Examiner Averill: On the record,

By Mr. Haycraft.

Q. I show you Commission's Exhibits 853-A and B for Identification and ask you if you can identify that as an original letter from—

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Mr. Weisman: Off the record.

(There was a discussion off the record.)

By Mr. Hayeraft.

Q.—from Charles G. Hutzler of Hutzler Brothers, Baltimore, Maryland, dated November 15, 1933, which you found in your files? A. I obtained this from Mr. Hutzler.

Q. From Mr. Hutzler.

(The letter was marked for identification Commission's Exhibits 853-A and 853-B.)

By Mr. Heyeraft.

Q. Is that the letter referred to in Commission's Exhibit 845-A? A. To the best of my knowledge, yes.

Mr. Haycraft: I offer it in evidence.

Mr. Weisman: No objection.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 854 for Identification and ask you if you can identify that as an original letter from the Guild—that is, the Fashion Originators Guild—signed by J. M. Golby, addressed to yourself under date of January 20, 1934? A. Yes, sir.

Q. Is that the letter referred to in the minutes dated January 25, 1934, and which were marked Commission's Exhibit 846-A? A. Yes.

(There was a discussion off the record.)

(The paper heretofore marked for identification Commission's Exhibit 854 was marked as an exhibit and received in evidence.)

Mr. Haycraft: Before going any further on the identification of this correspondence I will ask the witness to clarify the context of Commission's Exhibits 853-A and B.

10028

By Mr. Haycraft.

Q. At the time that this letter was written the Schleisner Company mentioned in the second paragraph was a member of your local guild—that is, the Ladies' Ready-to-Wear Guild of Baltimore? A. Yes.

Q. What business was it engaged in? A. Sale at retail of ladies' apparel and accessories.

Q. In the second paragraph of this letter it says, "We learn that the Schleisner, after having been informed of the privilege allowed one store in your organization, took advantage of this privilege by conducting a sale of merchandise contrary to the agreement amongst the members of our Guild." My first question is, what does that privilege allowed one store in the organization refer to there? A. As you will note from the date of that letter, when compared with the date—the organization date of the Ladies' Ready-to-Wear Guild, there was only a lapse of about sixty days, so that at this particular time, or shortly

prior thereto, the Baltimore Guild was more or less trying to determine what, in its opinion, was best for its members. The question of price lining had come up, and subsequently the question of permitting off prices, or the use of off prices, in connection with clearance sales had been discussed. Certain of the members held to the opinion that current sales would prove more effective if the merchandise was offered at off prices. Others felt to the contrary. So, in order to have something concrete to work on, we permitted one store to run a clearance sale at off prices, having notified the other members of the test, so to speak, that was going to take place.

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Q. That is what is meant in that?

Mr. Weisman: I submit that he be permitted to finish.

Examiner Averill: Do not-

Mr. Weisman: He is interrupting him. I want the whole story.

By Mr. Haycraft.

Q. Did I interrupt you? A. That was the agreement that was had among the stores at that particular time and had to do with the tests, so to speak, to ascertain the effect of off prices in connection with clearance.

Q. Have you completed? A. Yes, I have.

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- ⁶ Q. Now, then, the phrase "the privilege allowed one store in your organization," I ask you about that—was the privilege of selling at off prices which one store had been allowed? A. They were accorded the privilege of using off prices in connection with the specific clearance sale for a test purpose.
- Q. What is this price line agreement that is referred to, that you referred to in your testimony? Explain that. A. It was an agreement among the local stores as the result of which we had adopted certain retail prices, start-

ing at \$10.95 and, as I recall it, at that time going up to \$49.95. Simply provided for certain retail prices that should be used.

- Q. And the word "agreement" used in this paragraph which I just read you a moment ago referred to such a price line agreement in effect at that time? A. Well, now, I did not write that letter; I cannot say what Mr. Golby had in mind.
- Q. Had you reported to Mr. Golby such an agreement, line agreement, or line price agreement, I should say? A. I cannot answer that question, Mr. Hayeraft.
- Q. Had you reported to Mr. Golby that the Schleisner Company had been selling at off prices from a price line agreement? A. I had not.

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- Q. Do you know whether anyone had? A. I am trying to—pardon me for a moment. With this letter before me, I might be inclined to answer "Yes"; without the letter, why, I would have to say that I do not know, because Mr. Golby mentions in his letter that someone advised him, Now, who that somebody was I do not know, but I did not.
- Q. Do you recall the discussion of this transaction at the meeting of November 17, 1933? A. By reference to the minutes I can.
- Q. Yes. That is Commission's Exhibits 845-A and B; is that right (showing paper to witness)? A. Yes, sir.
 - Q. Will you refer to the minutes of November 25, 1934?

Mr. Haycraft: Off the record.

(There was a discussion off the record.)

Mr. Hayeraft: I will withdraw my last question.

By Mr. Haycraft.

Q. April 9, 1935, was the next one, was it not? A. Yes; that is the "Fifty Million Frenchmen" letter.

Mr. Weisman: Is that the "Fifty Million Frenchmen" letter?

Charles F. Roycroft-For Commission-Direct.

The Witness: Yes.

Mr. Weisman: You have got that in evidence already. Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

(Thereupon a paper was marked for identification Commission's Exhibits 855-A and 855-B.)

By Mr. Hayeraft.

Q. I show you Commission's Exhibits 855-A and B, purporting to be a form letter from the Coat and Suit Division of the Fashion Originators Guild of America, dated March 29, 1934. I will ask you if you can identify that as a letter referred to in Commission's Exhibit 847-A and the minutes of April 9, 1934? A. Yes, sir.

Q. Mr. Roycroft, I show you Commission's Exhibits 856-A and 856-B, respectively, for Identification, and ask you if you can identify it? A. Yes, sir, I can.

Q. What is it? A. It is a copy of a letter addressed to The Maison Annette Company in Baltimore, Maryland, by Mr. Golby of the Fashion Originators Guild.

Q. What is the date of it? A. Under date of February 15, 1935.

Examiner Averill: February 13, 1935?

Mr. Haycraft: No, February 15, 1935.

Mr. Bramble: February 15?

Mr. Haycraft: Yes.

Mr. Weisman: It is this letter here.

By Mr. Haycraft.

Q. Who is The Maison Annette Company? What is that firm? A. This is a local retailer handling ladies' ready-to-wear and located in Baltimore, Maryland.

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- Q. On the date of that letter was it a member of the adies' Ready-to-Wear Guild of Baltimore, Maryland? A. Tes, sir.
- Q. How did this copy come into your possession? A. had my secretary make a copy of the original letter which had been addressed to The Maison Annette Company.
- Q. Where did you get the original? A. As well as I an recall, Mr. Haycraft, the manager of The Maison annette Company loaned it to me.
- Q. Is this a letter—the letter, in fact—referred to in he minutes of the Ladies' Ready-to Wear Guild of Baltinore, Maryland, for the meeting of February 25, 1935, eing Commission's Exhibit 849-B and read by Mr. Hutzer at that time to the meeting? A. Yes, sir.

Mr. Haycraft: I offer the letter in evidence.

- Q. I show you Commission's Exhibits 857-A and B and sk you—these are for identification—and ask you if you an identify those two papers? A. Yes, sir.
- Q. Will you state what they are? A. It is a copy of letter which I prepared and sent out to the general nembership of the Baltimore Guild as a draft of a letter hich I proposed to send to the Fashion Originators Guild f America, outlining the action taken by the board of irectors—by our board of directors at its meeting on ectober 12 with regard to reaffirming our original decion to support the style piracy activities of the Fashion originators Guild.

Q. Is that referred to in the minutes that you identified esterday? A. It is.

Mr. Weisman: When you state "style piracy activities," he means "anti-style piracy activities," I assume.

Mr. Haycraft: I think it would be well to let the witness state what he means in that regard. 10040

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The Witness: Yes, that is true. It is us "agin" them. We were, of course, definitely opposed to style piracy, and it was activities of ours designed against such activities—namely, style piracy.

By Mr. Haycraft.

Q. Was the original of that letter sent to the Guild? A. Yes, it was.

Q. I will ask you whether of not after reading the excerpt of the minutes which I have just referred to, whether or not Commission's Exhibit No. 857-B is the letter which you sent to the Fashion Originators Guild of America, Inc., in response to instructions you received at the meeting of October 12, 1935? A. Yes, sir.

Q. That accounts for all of the letters which you produced. Which is the letter that you are unable to locate that I asked you for? A: The letter from Mr. Post regarding the employment of a shopper for Baltimore, supposedly dated some time prior to August 5, 1935, as is referred to on Commission's Exhibit No. 858-B.

Mr. Weisman: Referred to on Commission's Exhibit 858-B?The Witness: Yes.

By Mr. Haycraft.

Q. Calling your attention to the minutes of October 5, 1935, Commission's Exhibits No. 850-A, B and C, wherein there was a discussion with respect to the employment of a shopper at Baltimore, I will ask you whether or not as a matter of fact subsequent to that date a shopper was employed by the Baltimore Guild? A. A shopper was employed, but whether it was prior to or subsequent to that date I cannot state; but it was approximately around that time.

Q. Will you state the circumstances under which the chopper was employed? A. No, I cannot, because I did not employ her.

Q. Did the Baltimore Guild defray any expenses of the

shopper? · A. No, sir.

Q. Has it ever defrayed any expenses of a shopper? A. Yes; we sent one check to the Fashion Originators Guild of America, Inc., to help defray the expenses of the shopper in Baltimore.

Q. Do you recall when that was? A. Some time during 1935, I think, or possibly the early part of 1936.

Q. Does the shopper report to you in any way? A. Not unless she happens to meet me in the office.

Q. What does she report to you on such occasions?

Mr. Albert: You mean report, or communicate with you?

A. I do not know as I would term it as a matter of "reporting to me," but she might acquaint me with what is going on or has gone on in the way of copies, so to speak, that have found their way, into the Baltimore market. Probably more a matter of conversation than it is a matter of making a "report."

Q. Who is the shopper, by the way? A. A Mrs. Ellen

Lapedus.

Q. Has she always been the shopper from the beginning? A. She was the first shopper employed by the Fashion Originators Guild of America, Inc., and she has continued in that capacity.

Q. Does she have desk space in your office? A. Yes,

in one of our offices.

Q. Which ove? A. Just what do you mean by "which one"?

Q. You said in one of your offices; do you have more than one office?

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Mr. Weisman: He means one of the rooms of their offices. They have several rooms in the office.

The Witness: We occupy the entire twelfth floor of the Lexington Building and it has been broken down into offices and we have given her permission to use a desk in one of our offices.

By Mr. Haycraft.

Q. I notice that in the minutes on the third page of Commission's Exhibit No. 850-C you make this statement: "It was felt that the Baltimore Guild should have some control over her (the shopper's) activities. cordingly decided, upon motion which was duly seconded and carried, that the Guild agree to reimburse the Fashion Originators Guild for part of the expense incurred in employing a shopper for Baltimore; that she would be employed by the Fashion Originators Guild and receive her compensation from that organization, but that she report to the secretary of the Baltimore Guild, and work under his supervision, it being understood that at least for the present the Baltimore Guild would furnish her with desk space." Would you say that that was never carried out? A. No. I would not say that that was never carried out, but that is not the set-up at the present time.

Q. Was there ever a time that the shopper worked under your supervision and reported to you? A. When she first came to Baltimore, yes.

- Q. For how long did that last? A. I could not say exactly, but for such time as she had to have in order to have an opportunity to familiarize herself with the city and to meet and know the different people with whom she would work in the stores.
 - Q. Did you introduce her to the various stores? A. I arranged for her to meet the merchandise managers of the largest stores and then, at the first meeting of the

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Guild following her coming to Baltimore, why, I arranged for her to be at that meeting so that she could meet all of the members who would attend.

- Q. What instructions, if any, did you give her? A. As far as I can recall at this time, none. She had received her instructions from the New York office of the Fashion Originators Guild of America.
- Q. What, if any, reports did she make to you at the beginning—that is, when she first came here? A. Reports merely as to how she would work and how she was coming along in her contacts. She would come in to see me and then she would go out to see them and then she would come back and tell me how she came out with her visits. It was just a friendly co-operation.

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- Q. Did she ever report to you when she found copies of any merchandise in stores—copies of Guild merchandise in stores that she was calling on, if she did so? A. She would comment about it to me. I do not know whether you would classify it or term it "reporting to me."
- Q. Do you know whether or not any local meetings or meetings of local dealers were held to determine whether a garment, any garments found by the shopper in the stores, was in fact a copy of Guild merchandise? A. Yes, sir.

(There was a discussion off the record.) Examiner Averill: Back on the record.

By Mr. Haycraft.

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Q. Did you have anything to do with the selection of those committees of retailers? A. On one occasion Mrs. Lapedus asked for my advice as to whom to contact in connection with the meeting to be arranged for the perpose of determining whether or not certain garments were copies.

By Mr. Haycraft.

- Q. Was that at the time that she first came to Baltimore, or recently? A. It was the first occasion, as I recall, that she had to arrange such a meeting, or had for arranging such a meeting.
- Q. Did she report to you the results of that meeting? A. The meeting was held in my office, so there was no necessity for that.
 - Q. And you were present? A. Yes, sir.
- Q. Was any written report made of the results of that meeting? A. I cannot answer that question.
 - Q. Was any report made by you? .A. No, sir.

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Q. But you do not know whether she made a report or not? A. No, sir.

Mr. Albert: To whom?

By Mr. Haycraft

- Q. Are you sufficiently familiar with her duties to know whether it is customary for her to make reports of such meetings to the Guild? A. No.
- Q. Subsequent to that first occasion that you refer to, have there been other instances of meetings of local dealers for the same purpose? A. Which I attended?
- Q. No, that came to your knowledge, and by "the same purpose," I refer to your determining whether or not, as a matter of fact, a garment which had been selected by the shopper as a copy was, in fact, a copy of Guild merchandise? A. Yes, sir.

- Q. On those occasions, how did the matter come to your knowledge? A. In the course of conversation either with Mrs. Lapedus, or one of the retailers who may have served as a member of the particular committee.
- Q. Subsequent to that first meeting which you attended, who made the selection of the members of such commit-

tees, local committees? A. I am not familiar enough with the procedure to state definitely. I have an idea but I would not want to state it as a fact.

- Q. The only one you are sure about is the first one you had any part in yourself; is that right? A. As to——
 - Q. The selection? A. As to the selection, yes.

Mr. Haycraft: May I have those rules and regulations you have there?

Mr. Bramble: This (handing papers to Mr. Haycraft).

By Mr. Hayeraft.

Q. I show you Commission's Exhibit 859 and ask you if you can identify and tell us what that is? A. Yes.

Q. Will you describe each one for the record as to what they are, each page? A. 859 is—

Mr. Bramble. Are you going to offer that?

Mr. Haycraft: Just as soon as I get through identifying it.

Mr. Weisman: Then off the record.

(There was a discussion off the record.)

Examiner Averill: Gentlemen, the papers that the witness has just been testifying to constitute one subject, and deal with one subject, namely, the articles of constitution, rules and regulations of the Ladies' Ready-to-Wear Guild of Baltimore. These consist, with the cover page, of eight pages, the same being firmly fastened together as a book with fasteners, and will be identified as one exhibit and be marked Commission's Exhibit 859 for Identification. Now, Mr. Haycraft, go ahead with your identification.

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Charles F. Roycroft-For Commission-Direct.

By Mr. Haycraft.

Q. I want you to tell us what pages 2, 3 and 4 are in there, so as to make it clear.

Mr. Bramble: If your Honor please, I do not interpose an objection now, but is not that another way of getting the paper in before we have a chance to object? Why can we not have the paper offered and then have him explain?

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

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By Mr. Haycraft.

Q. I will ask you if this exhibit which the Examiner has just had bound together includes the agreements between the Ladies' Ready-to-Wear Guild of Baltimore and the Fashion Originators Guild of America, Inc.? A. No, sir.

Q. Is that agreement Commission's Exhibit 843 A to G, inclusive? A. Yes, sir.

Mr. Haycraft: At this time I offer in evidence Commission's Exhibit 859, as identified by the witness.

Examiner Averill: I overrule the objection, gentlemen, and note an exception to counsel.

Mr. Bramble: Exception.

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Examiner Averill: And the papers in question are pages to be numbered commencing with the outside title page, from one to eight, inclusive, and will be received in evidence as Commission's Exhibit No. 859.

Mr. Haycraft: Off the record.

(There was a discussion off the record.)

(The papers referred to, consisting of eight pages, heretofore marked for identification Commission's Exhibit 859, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 851 for Identification, Mr. Roycroft, and I will ask you if you will identify that exhibit as to just what it is. A. Yes.

Q. What is it? A. It is my office copy of the by-laws, rules and regulations, and agreement with the Ladies' Ready-to-Wear Guild of Baltimore.

Q. In effect at the present time? A. Except for the 10 agreement, yes.

Q. Is the agreement attached to the xhibit?

(The withess examines the document for several minutes.)

A. No, not to my office copy.

Q. No? A. No. May I qualify that answer to leave out the agreement.

Q. In other words, it is the by-laws, rules and regulations of the Baltimore Guild? A. Yes, it is the by-laws, rules and regulations of the Baltimore Guild.

Q. In effect at the present time? A. Yes, sir.

Q. Does that exhibit indicate on the various and respective pages thereof the dates of the various rules and regulations as to when they were adopted? A. It gives the approximate date when the various rules and regulations were adopted, yes.

Q. Calling your attention to Commission's Exhibit No. 6, an agreement between the Ladies' Ready-to-Wear Guild of Baltimore, Inc., and the Fashion Originators Guild of America, Inc., entered into on September 30, 1935, I will

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ask you whether or not that agreement, which is to expire on December 31, 1935, was ever renewed? A. No. sir.

- Q. Referring to Commission's Exhibit No. 851 for Identification, are any of the rules, regulations, and by-laws contained therein rules and regulations of the Baltimore Ladies' Ready-to-Wear Guild that were adopted subsequently to December 31, 1935. A. Yes, sir.
 - Q. Which ones? A. What?
- Q. On what pages and which ones? A. Page 6, page 7, and page 8. I beg your pardon, I will have to eliminate page 8; page 9 and page 10.
- Q. Will you give those pages again so we may be certain of that? A. Yes. Page 6, page 7, page 9, and page 10.
 - Q. Referring to page 6-

Mr. Haycraft: I am trying to get this so I can make my offer. I am not trying to get anything in the record but just to make clear what I am offering.

By Mr. Haycraft.

- Q. I notice the date effective is August 1, 1936, as to page 6. I will ask you whether or not the price schedule similar to that was in effect, a price schedule similar to that was in effect on December 31, 1935, as a rule or a regulation? A. Yes, sir.
- Q: The same question as to page 7, which refers to the matter of alteration charges. A. Yes, sir.
 - Q. As to pages 9 and 10, when were they actually adopted by the Baltimore Guild? A. During April of 1936.
 - Q. Mr. Roycroft, heretofore in your testimony reference has been made to a so-called "price-line agreement," also in minutes of the Baltimore Guild. A. Yes.
 - Q. I will ask you to explain for the record what is meant by the term "price-line agreement," and if in doing

so can you clear up on page 6 of this exhibit, Commission's Exhibit 851 for Identification, the matter, because this is the exhibit that we are now discussing. A. The price-line agreement, as I understand it, and as I have referred to it, has to do with a group of suggested prices which the Baltimore Guild adopted.

Examiner Averill: 1 want to ask the witness several questions about this matter.

By Examiner Averill.

- Q. From whom did those suggested prices emanate? A. For whom?
 - Q. From whom? A. From whom?

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- Q. By whom were the prices suggested? A. They were suggested by the—
- Q. Manufacturer? A. Various members of the Baltimore Guild.
- Q. When? A. Prior to the organization of the Guild, why, the price set up on ready-to-wear, and particularly ladies' ready-to-wear in Baltimore was more or less chaotic, you might say, to the extent that one store might be offering prices of \$11, another of \$10.95, another at \$10.75, and another at \$10.89, or any price thereabouts that you might think of or that might suggest itself to them.

In order to clarify the price lines, we asked for suggesttions from all members of the Guild as to what prices from approximately \$11, or \$10, up to and around \$50, they felt might be desirable both from—well, particularly from, as I might say, for price appeal. In other words, in my opinion, the \$10.55 is a price having a price appeal for women that is more than the full \$11 price. The scale as it was finally adopted, or the prices, as were originally adopted in the scale, were taken from the suggestions which came in from all of the members, so that where one member might feel that \$10.95 would be desirable, and

another one might feel that \$10.89, however, if the majority favored \$10.95 then \$10.95 it was.

Q. That is how they were arrived at? A. Yes, sir.

By Mr. Haycraft.

Q. Referring to these pages-

Examiner Averill: One moment. I would like to follow my line of thought for a moment in order to clarify this matter.

Mr. Haycraft: Certainly.

By Examiner Averill.

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- Q. What consideration was given, if any, in arriving at these price-line understandings, to suggestions for these price-line suggestions from the manufacturers of nationally advertised apparel, if these be suggestions, in fact? A. We have had none from the manufacturers. We have made an exception—as a matter of fact, I know we have made an exception in our agreement as it applies to nationally advertised apparel simply at the request of one who at that time had-and I refer to one of our members who was handling an advertised line, or handling nationally advertised merchandise, or carrying nationally advertised merchandise in his line as, for example, merchandise carried in "Vogue" from time to time, as it has a specific price, and "Vogue" is a magazine having a national dis-We realized that if our price line in Baltimore was \$14.50, and "Vogue" advertised a specific garment at \$15, the Baltimore stores carrying that merchandise should tie in with the nationally advertised price, consequently, we allowed an exception in that case so as to permit the Baltimore stores who might be carrying these particular styles, and which were advertised in "Vogue," to offer them to the customer at the nationally advertised price.
 - Q. If they so desired? A. Yes, if they so desired.

Q. You use the word "permit"; that is what I want to know about. A. It was optional with them if they wanted to mark it any price they chose, but the question was primarily raised to permit them to make their prices and to mark them at those prices as set forth in "Vogue," or other nationally advertised garments.

Examiner Averill: That explains what I had in mind.

By Mr. Haycraft.

Q. Was it an understanding as the result of any—any of these price-line agreements—was it the understanding concerning any of these price-line agreements that the price of them, of the garments— A. I am afraid I do not understand.

Q. I will start it from a different angle. A. Yes.

Q. Was it an understanding as the result of these priceline agreements that the members of the Baltimore Ladies' Ready-to-Wear Guild would observe the prices on the price schedule which was adopted by the Guild in marking up their merchandise in the ranges covered by that schedule? A. Did I understand you to say "as it understood"?

Q. Yes. A. That they would?

Q. Yes. A. Yes.

Q. It was? A. Yes, it was.

Q. Was there any; outside of the exceptions that you just referred to now, and which I think were further set forth in the testimony heretofore, what was the policy of the Baltimore Guild as to exceptions from the schedule as to allowing local merchants, members of the Baltimore Guild, to differentiate from the price list, or depart from the price list in those schedules as set forth? A. Well, in the case of coats, the coat schedule, as an example, as set forth in there, why, any coats advertised in a sale, or, as we term it, "under the caption 'sale," could be marked any price the retailer saw fit.

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- Q. Any other exception? A. There is another exception entered in there with regard to suits priced to resell below \$17.95.
- Q. What is that? A. In other words, any retailer buying suits, why—and he was going to mark them below \$17.95, why, he could use his own discretion as to the price he was going to mark them—
- Q. With that exception— A. Say that the price stood at \$10.95—the suit started at \$17.95, but perhaps I had better give you the full range there. In the first place, the dresses started at \$10.95. The suits started in at \$17.95. The agreement only held true on coats when they were offered at other than "sales."
- ^o Q. And this exception as to coats, was that one of the things took place effective August 1, 1936? A. No, that exception has been in there for a very long while.
- Q. That has been in there for a good long while? A. Some time.
- Q. That has been in there for a good long time? A. Yes, sir; it has been in there for quite some time.
- Q. Was there any exception as to any other garments in the price range other than coats and suits? A. None that I can recall offhand.

Examiner Averill: Off the record.

(There was a discussion off the record.)

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By Mr. Haycraft.

Q. You say that was in effect before August, 1936. Was it adopted about April, 1936, Mr. Roycroft?

Examiner Averill: He is referring now to page 6. Mr. Haycraft: Yes, I am referring to the exception as to suits in \$17.95, part of that.

Examiner Averill: Yes. All right.

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A. This particular averment, as you have it on page 6, was in effect prior to August 1, 1936, except for some minor changes which were made as of August 1.

Examiner Averill: And for how long had it been effective prior to that time?

The Witness: It was adopted at the April 20, 1936 meeting of the Baltimore Guild.

Examiner Averill: That was its first adoption, 1936?

The Witness: No, that is the one that superseded this one (indicating papers).

Mr. Haycraft: That one superseded it, you mean?

Examiner Averill: Yes, the one on page 6.

The Witness: The one—preceding the one of April 20.

Examiner Averill: 1936?

The Witness: April 20, 1936.

By Mr. Haycraft.

Q. What one did that, in turn, supersede? A. That is what—pardon me—this is off the record.

(There was a discussion off the record.)
Mr. Haycraft: I withdraw the last question.

By Mr. Haycraft.

Q. Let me ask you this question: When did the Baltimore Guild first adopt the price-line schedule or agreement? A. During the latter part of 1933.

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Mr. Weisman: That was under the N.R.A.?

The Witness: As I recall it, the N.R.A. was in effect at that time.

By Mr. Haycraft.

Q. Did the N.R.A. have anything to do with that priceline schedule, to your knowledge? A. Just what do you mean by the N.R.A. having——

Q. Well, anyone from the N.R.A., or did you go to the N.R.A. with the schedule? A. We had a member—a member of the organization on the local board of the—at least on the local retail board of the N.R.A.

Q. The point I am trying to make, was the price-line schedule you referred to a part of an N.R.A. project that you were working on? A. No.

Q. All right. When was it in 1933 that the first priceline schedule was adopted? A. During October, 1933. When you say "adopted," I presume you mean put into effect?

Q. That is right.

Examiner Averill: And thereafter, sir, were there, from time to time, changes, additions or eliminations from that schedule?

The Witness: Yes, sir.

Examiner Averill: Which followed on down consecutively at various times until—

The Witness: Present date.

Examiner Averill: Until August, 1936, at any rate?

The Witness: That is it. The first schedule, or, at least, price line, was first discussed with the Guild during September, 1933, and a definite schedule put into effect during October of 1933. Since then, why, there have been elaborations, modifications from time to time up until the present day, when we now have in effect the schedule which you have in the booklet there, dated August 1, 1936.

Examiner Averill: I see.

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By Mr. Haycraft.

Q. Just one more question. Getting back to the question I propounded a while ago. When was it that the Guild put into effect its price-line schedule on suits—that is, suits priced to retail below \$17.95, which is indicated on page 6?

Mr. Bramble: Off the record.
(There was a discussion off the record.)
Examiner Averill: On the record.
The Witness: May I have that question again?
(Last question read.)

A. I presume you mean the exception?

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By Mr. Haycraft,

Q. The exception referred to. A. Suits retailing under \$17.95?

Q. Yes. A. That exception was made at the board meeting on April 25, 1936.

Q. Can you state why that exception was made?

Mr. Weisman: Wait a moment, let us not go afield on that.

Mr. Haycraft: All right.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Haycraft: Probably I better ask a couple of questions.

Examiner Averill: On the record?

Mr. Haycraft: Yes. We will leave this for the time being, and take 7, I think I can ask a couple of questions and give you a basis to rule on them.

Examiner Averill: All right. Go ahead.

By Mr. Hayeraft.

- Q. Referring to your schedule of alteration charges on page 7 of this Commission's Exhibit 851 for Identification, I will ask you whether or not this schedule is similar in form to the second page of Commission's Exhibit 859 already in evidence, which on its face was made effective June 1, 1932? A. I would like to qualify my answer, if I may. You will note that the particular schedule that you refer to is a schedule of the Retail Merchants Association.
- Q. Yes. A. Which was adopted June 1, 1932, and antedates the organization of the Baltimore Guild.
- 10091 Q. Would you say, then, that— A. Pardon me just a moment.
 - Q. Yes. A. What you have offered in evidence here is in effect a schedule of the Retail Merchants Association of Baltimore which I had simply in my minute book as an office copy, so to speak, because the Guild schedule was patterned after the one which had been adopted by the Retail Merchants Association.
 - Q. In other words, the schedule of alteration was a matter that had been adopted by the Retail Merchants Association prior to the organization of the Baltimore Guild? A. Yes, sir.
 - Q. And the Baltimore Guild simply adopted that schedule as a part of its activities, did they? A. Yes, sir.

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Examiner Averill: That is all.

By Mr. Haycraft,

Q. Would you say that the schedule of alteration charges, page 2 of Commission's Exhibit 859, was one of the rules or regulations of the Baltimore Guild at the time it began—that is, from the time it began, for the time of its existence as a beginning, in 1933? A. I am inclined to think that this schedule as promulgated by

the Retail Merchants Association was adopted by the Baltimore Guild shortly after the Guild's organization.

Q. Was it continuous throughout the life of the old organization, and then adopted by the new organization? By the "new organization" I mean the present Guild.

Examiner Averill: You mean the incorporated Guild?

Mr. Haycraft: The incorporated Guild, with such modification as was necessary from time to time to make.

A. Yes, sir,

By Mr. Haycraft.

Q. So that page 7 of Commission's Exhibit 851 for Identification is a continuation of a schedule of alteration charges of misses' and women's wearing apparel, originally adopted by the Guild in 1933? A. Or some time thereabouts, yes.

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit No. 851 for Identification, the paper being the by-laws, rules, regulations and agreement of the Ladies' Ready-to-Wear Guild of Baltimore, Inc., to which objections have heretofore been made, all objections are overruled and the paper will be received in evidence, and the same will be marked Commission's Exhibit 851, pages 1, 2, 3, 4, 5, 6-page 7 has been withdrawn, and will be physicaly removed from the papers-the page heretofore spoken of as page 8 will be received in evidence and marked "page 8"; pages 9 and 10, as originally contained, not being offered, will not be any part or parcel of this exhibit. The page No. 8 is headed "Ladies' Ready-to-Wear Guild of Baltimore Regulations Governing Fashion Shows." That .10094

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is the page referred to. Those pages received in evidence will be bound together and given one exhibit number, namely, Commission's Exhibit No. 851, without any subnumbers thereunder.

(The document heretofore marked for identification Commission's Exhibit 851 was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

- Q. Mr. Roycroft, in carrying out the functions and details of the activities—in carrying out the functions of your office as secretary of the Ladies' Ready-to-Wear Guild of Baltimore, what have been your duties and what have you done aside from keeping the minutes which you have gone into heretofore? A. Taken care of the general correspondence of the Baltimore Guild.
- Q. Yes. A. Also I have accepted it and acted as the headquarters for, or, at least, have maintained the headquarters of the organization in my office as the result of which all suggestions, complaints, and what not, have, for the most part, come to my attention, or have been brought to my attention.
- Q. With whom have you principally had correspondence? A. With the local members.
- Q. Do you carry on correspondence with the Fashion Originators Guild of America, Inc.? A. From time to time.

10098

By Mr. Haycraft.

- Q' Would you write to them when you had a complaint. that the local rule, a local rule was being violated—a rule of your Ladies' Ready-to-Wear Guild of Baltimore? A. World I write to them if I had a complaint that the local rules were being violated?
- Q. Yes. A. No.

- Q. No? A. No.
- · Q. Would you write to them-what would be the circumstances under which you would write to them? For instance, would you acquaint the Fashion Originators Guild of America of any infraction of the rules of the local Guild? A. Not necessarily.
- O. I do not mean necessarily: I am asking you whether you did or not. A. You said would I, if I understood you correctly, and I said-
 - Q. Yes. A. -I said not necessarily.
 - Q. Have you, in any event? A. I do not understand.
- Q. Have you ever notified them? A. Have I notified them-may I repeat that question, just for a minute-· have I notified the Fashion Originators Guild of America, Inc., of any violations or infractions of the rules of the local association; is that your full question? Q. Yes, have you done so? A. Of what guild?

- Q. Of the Ladies' Ready-to-Wear Guild of Baltimore. A. No. sir.
 - Q. No? A. No.
- Q. Is it your custom, Mr. Roycroft, to acquaint the executive secretary of the Fashien Originators Guild of America, Inc., of applications that you have had for membership in the Ladies' Ready-to-Wear Guild of Baltimore, Inc.? A. It was the custom to notify Mr. Golby as executive secretary of the Fashion Originators Guild of America, Inc., as to any action taken by our board concerning members or local retailers who might have been or whose applications might have been received by our Board of Directors for acceptance by the members.

Q. Did Mr. Golby, in turn, call upon you to inform him as to whether or not certain retail dealers in Baltimore were members of your organization or had applied for membership? A. From time to time; yes, sir. .

Q. What would you do when those requests were made? A. I would answer his inquiry.

19100

- Q. Calling your attention to Commission's Exhibit 103, I will ask you whether 6 not the "For Madam Dress Shop," operated by Mrs. Edward D. Fenton, became a member of the Baltimore Guild in September, 1935, or thereafter? A. I would like to answer the question by stating that Mrs. Fenton never operated the "For Madam Dress Shop."
- Q. Did Mrs. Fenton purchase the "For Madam Dress Shop"? A. I do not know.
- Q. Did Mrs. Fenton ever become a member of your organization? A. Yes.
 - Q. She did? A. Yes.
- Q. Under what name did she become a member of your organization? A. Mrs. Edward T. Fenton—Mrs. Edward D. Fenton.
 - Q. Where was the located? A. As far as I can recall, in the Guilford Manor Apartments, or it may have been the Cambridge Arms, I do not know; but I think it was one or the other.
 - Q. You think it was one or the other? A. I do; yes,
 - Q. Now, directing your attention to Commission's Exhibit 104, I think it is a lettered exhibit A and B, I suppose it is. I will ask you whether or not you have a recollection of the subject matter of that letter? A. I recall—to answer your question, Mr. Haycraft—I recall the condition, if I may call it that, that necessitated the writing of this letter.

Examiner Averill: Now, I wish you would put in there that it appears that the letter in question is a letter from whom.

Mr. Weisman: From the Fashion Originators, Guild.

The Witness: From the Fashion Originators Guild of America to myself, as secretary of the Baltimore Guild.

Mr. Haycraft: On October 1, 1935.

.....(7

By Mr. Haycraft.

Q. I show you Commission's Exhibit-

Mr. Weisman (interposing): Well, now-

By Mr. Haycraft.

Q. -111, 112 and 113, and ask you if you recall-

Mr. Weisman (interposing): May we have those?

Mr. Bramble: May I see those?

Mr. Weisman: May we get through with one exhibit at a time. Judge, instead of hopping from one to another?

Examiner Averill: I think it would be much better, but I do not know what they contain.

Mr. Haycraft: Cannot do it that way, it is impossible, Mr. Examiner.

Examiner Averill: Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. Showing you Commission's Exhibits 111, 112 and 113, I ask you whether or not you are familiar with the telegrams therein set forth?

The Witness: May I have the question? (Last question read.)

A. I am not familiar with the Exhibit No. 111 that was sent by a member of the Baltimore Guild to the Fashion Originators Guild and did not pass through my hands. The same applies to Exhibit No. 112. I am familiar with Exhibit No. 113.

Q. That is your telegram, is it not? A. It is a telegram of Ladies' Ready-to-Wear Guild of Baltimore sent by me.

Q. And addressed to Mr. Post?

10106.

Mr. Weisman: I object to that, the document speaks for itself.

Examiner Averill: I know, but let it show on the record so that we may know what we are talking about.

Mr. Weisman: Withdraw the objection. Examiner Averill: You see what I mean?

Mr. Weisman: I should not have objected. Mr. Albert is going to conduct the examination from now on. I am leaving.

By Mr. Haycreft.

10109 Q. What is your answer—addresed to Mr. Post? A. Yes, sir.

Q. Would you say that the other two telegrams, Commission's Exhibits 111 and 112, relate to the same subject-matter? A. Yes.

Q. Mr. Roycroft, what was the situation in Baltimore that prompted the sending of your telegram to Mr. Post, under date of October 1, Commission's Exhibit 113? A. As I recall, an announcement sent out by a resident of Baltimore in the form of an invitation to her-I suppose you might term it that-friends and associates, directing attention to the fact that Chezrozette, who was going to conduct a fashion show at her residence, or at the residence, I think, of a friend of hers-the location of this friend's house being in a section which is zoned in Baltimore City, as strictly residential. In other words, by permitting Chezrozette to go into that section she was unquestionably having an advantage which none of the local retailers could have. The zoning laws of Baltimore preclude the possibility of a local retailer setting up for business in that section.

Examiner Averill: This Chezrozette is a dealer? Mr. Haycraft: No.

Examiner Averill: In Baltimore?

The Witness: No, he is a New York retailer coming down to Baltimore.

Examiner Averill: I see.

The Witness: Setting up in the restricted neighborhood, selling—

Examiner Averill: Under the guise of a private house?

The Witness: The Guild merchandise under the gase of a fashion show.

Examiner Averill: Yes.

The Witness? We shopped the etsablishment and found that they were violating the itinerant vendor's laws of the State of Maryland, brought the State license bureau into the picture; they, in turn, brought the two local aids into the office of the State license bureau, cautioned them as to what would happen if they attempted to repeat it—I mean, repeat the arrangement; and, as I recall it, subsequently noted either Chezrozette or Jane Engel.

R. Mr. Haycraft.

Q. Who was Jane Engel? A. I understand that Chezrozette is a branch, or something to that effect, of Jane Engel in New York.

Q. Where in Baltimore was this display to be made? A. I do not recall the exact address, but it was in the vicinity, I think, of University Parkway, in that general location, one of the most exclusive residential sections of Baltimore.

Q. How did you say you learned of this taking place? A. The particular lady who was working out the details with Chezrozette had sent invitations around to the residents of Baltimore, extending an invitation for them to attend.

10112

Q. I notice here it says, "Baltimore Guild definitely opposed Chezrozette or Jane Engel displaying merchandise in Baltimore as planned. Announcements indicate practically all Baltimore Guild regulations will be violated during this showing. This set-up places them in the classification. Baltimore retailers insist Fashion Originators Guild compel them to conform to our regulations when operating locally." What were the Guild regulations that would be violated? A. Selling—

Mr. Weisman (interposing): Will you answer that, will you make that plain. Do you refer to the Baltimore Guild?

Mr. Haycraft: That is what it says.

Mr. Weisman: All right. The reason I say this off the record.

(There was a discussion off the record.)

Examiner Averill: But I think the telegram clearly shows it refers to the local Guild regulations in Baltimore which were being violated.

Mr. Weisman: Yes.

Examiner Averill: All right.

By Mr. Haycraft.

Q. Go ahead, now. A. Primarily, that they would be selling from an apartment house shop; secondly, that they would be setting themselves up in Baltimore under the guise of a display, and from what we had been given to understand, actually selling merchandise:

Q. Was there any rule or regulation of the Baltimore Guild that you recall being violated, or that would be violated, if that showing was allowed? A. Not that I can recall at the present time.

Q. How about the price-line agreement? A. I had no knowledge as to what price line Chezrozette used, so that—

10115

Q. Did you see the announcement? A. Yes, but the announcement was not an announcement of Chezrozette, but an announcement of a Baltimore woman, simply calling attention to the fact that this fashion show would be held at her home, and made no effort to quote prices, so to speak.

By Examiner Averill.

Q. Well, did your Guild take steps, or did you take steps, acting for your Guild, to follow up and see what was actually done, or undertaken to be done, about that fashion show or so-called fashion show? A. Yes, sir.

Q. Would you mind telling us what steps? A. We arranged to have Mrs. Lapedus present.

Q. That is your shopper? A. That is the Fashion Originators Guild shopper, present at either Mr. Golby's or Mr. Post's suggestion, and we arranged to have her present on the first day to observe and see what actually transpired. She came back and reported to me that—she came back and reported merchandise was actually being sold. matter of fact, they were using the second floor as sort of a fitting room, I am told. I then called the State License Bureau, knowing-being familiar to a certain extent with the itinerant vendors' law in Maryland, I called Mr. Bratton, and stated to him what was actually transpiring. He said we would have to have evidence, and, consequently, the next morning I sent Mrs. Lapedus out the second time with money, gave her instructions that, if possible, to buy or make a purchase there. She came back that afternoon with the dress, as I recall. She had paid about \$17.95 for it, with a sales check. With that evidence I then went over to Mr. Bratton's office, submitted the sales check and the report of the shopper, and on the strength of that he communicated with the two ladies involved. only a two days' showing, as I recall, and as he explained to me at that time it was only a matter of an hour or two

10118

yet before they were going to close up anyhow, but he would have them in there within a day or two and sort of read the riot act to them. He explained to me that an out-of-State retailer coming into the State of Maryland, taking orders and actually making delivery, and consummating sales in Baltimore City, without having first taken out an itinerant vendors' license, they were in violation of the State laws, and that if a case really wanted to be made, of course, they were perfectly willing to prosecute, but the violation, in his opinion, possibly did not justify bringing Chezrozette back into the State of Maryland for this particular offense, but that they would put themselves on record with them.

10124

Examiner Averill: Do you know whether the firm calling themselves Chezrozette are manufacturers or retailers?

Mr. Haycraft: They are New York retailers.

Examiner Averill: New York retailers?

Mr. Haycraft: Member of a New York Uptown Guild.

By Mr. Haycraft.

Q. I call your attention to Commission's Exhibit 114, and ask you if you recall writing that letter to Mr. Post in reply to his letter which is in evidence as Commission's Exhibit 104?

10122

Mr. Bramble: May we look at that just a moment?

Examiner Averill: You may look at it. Off the record.

(There was a discussion off the record.)

Mr. Haycraft: Read the last question.

(Last question read.)

A. I can recognize it as a letter I wrote; I cannot recall having written it.

10123

By Mr. Haycraft.

- Q. I cannot do that because the record is gone now, but I will ask you now so that you will have the matter entirely before you this question which will clarify it: If you will explain what price lines were meant in this particular letter? A. The price-line schedule, or at least the price lines which were being used by the Baltimore stores; namely, \$10.95 to \$49.95, I think.
- Q. Did you at a meeting with the members of the local guild discuss this matter—first, I will ask you had you had a meeting with the members of the local guild with respect to this matter? A. I think we had a meeting with the members of the Baltimore Guild at which this particular matter was discussed, yes.

10124

Examiner Averill: Was that the meeting of the Baltimore Guild prior to the sending of the two telegrams; namely, Commission's Exhibits 111 and 112, which, according to your testimony and according to the signature thereto, was sent out by members of the Guild and not by the Guild itself, so that—first, was that directly afterwards or some time after the period that you have reference to?

The Witness: I am inclined to think that our meeting was prior, but before definitely answering I would like to check up our minutes against the date of this telegram.

By Mr. Haycraft.

Q. Have you got the date of that meeting now? A. There is an approximate date on that letter, is there? If there is some date that you can give me I would appreciate it.

Mr. Haycraft: October 22 was the date of that letter.

Charles F. Roycroft-For Commission-Direct.

Examiner Averill: '35? Mr. Haycraft: '35.

By Mr. Haycraft.

Q. Can you find it? A. To answer your question, Judge, I think the meeting of September 30, 1935.

Examiner Averill: '35? The Witness: Yes.

By Mr. Haycraft.

Q. By reference to those minutes, can you find out when this matter was discussed, and, in fact, whether it was discussed at the meeting of September 30, 1935? A. Yes.

Q. Will you do so? A. Yes.

Q. Have you done so? A. I have.

Q. Was it? A. It was.

Q. It was? A. Right.

Q. Those minutes are in evidence as Commission's Exhibits 852-A to C? A. No, A to D.

Q. A to D? A. A to E, I think—wait a minute, there seems to be a whole lot of the alphabet here.

Q. Is it A to G? A. A to G.

Q. A to G? A. Right, A to G is right.

Q. I show you Commission's Exhibit No. 115 and ask you if you recall receiving the original of that letter? A. Just a moment until I get hold of the exhibit itself.

10128

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(The witness examined the exhibit for some time.)

The Witness: Now, if I can have the question read again, please.

(Question read.)

By Mr. Haycraft.

Q. Do you recall receiving the original of that letter?
A. I do.

Q. You do recall receiving it? A. I do.

Q. Now, I will ask you whether or not you made any attempt to ascertain whether the garments—whether the agreement referred to in that letter was carried out? A. I beg your pardon.

Q. I will ask you whether or not you made any attempt to ascertain whether or not the agreement that is referred to in that letter was carried out? A. I think I mentioned earlier in my testimony that I had Mrs. Lapedus, the Fashion Originators Guild of America; Inc., shopper, attend the fashion show on two days for the purpose of ascertaining exactly what happened, or transpired there.

Q. Did she, Mrs. Lapedus, the shopper for the Fashion Originators Guild of America, Inc., report to you the prices at which the garments were being sold? A. Yes.

Q. She did? A. Who?

Q. Your shopper. A. Our shopper?

Q. Yes. A. Oh, I did not have your question clearly in mind. I do not think she gave me a complete range of the prices at which the merchandise was being offered. I think, however, she did mention several of the prices, and the prices, as I recall, why, were rather in line, or comparable to the prices at which the Baltimore stores were offering the merchandise.

Q. Did she quote that there were any "off" prices reported as being observed by her as being quoted by the
dealers at that fashion show?

Mr. Weisman: If the witness knows.

A: I do not recall at this time.

10130

Roomo401, United States Appraisers Store Building, Baltimore, Maryland, November 11, 1936.

Met, pursuant to adjournment, 10.30 A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same appearances.)

CHARLES F. ROYCROFT resumed the stand and testified further as follows:

10133

Direct examination (continued) by Mr. Haycraft.

Q. Calling your attention to Commission's Exhibit No. 114, a letter you wrote to Mr. Post under date of October 2, 1935, in which you state as follows, in substance: We feel very definitely that Chezrozette in coming to Baltimore and possibly identifying with the Baltimore stores the very dresses they have will cause our members, or particularly the smaller shops, considerable embarrassment, and it is at their suggestion I am writing and asking the F.O.G.A. to at least insist that the established price line promulgated by the Guild here be adhered to by Chezrozette. In what way would the sale of any dresses by Chezrozette cause embarrassment to the members of the Baltimore Guild? A. We in Baltimore had established regular prices for merchandise in the opinion of a number of our smaller shops, or establishments, particularly those catering to the trade to which it was reasonable to assume would be invited to this particular show, and the offer by Chezrozette of merchandise at prices at variance with our established prices, why, would create confusion in the minds of the customers of the Baltimore stores.

Q. Can you give us an illustration of how it would cause confusion? A. Well, as a sample of what it would do, we had in Baltimore a \$17.95 retail price. We had in Baltimore a \$15 price. For Chezrozette to come into Baltimore with \$16.50 merchandise, or a price thereabouts, we were inclined to feel that the Baltimore customers, or, at least the customers of the Baltimore stores would not be in position to know whether they were getting from Chezrozette \$15 merchandise at \$16.50 or \$17.95 merchandise at \$16.50. As a matter of fact, I might say that what did toppen was that at least in the instances of the merchandise that I purchased from Chezrozette was getting \$17.95 for \$15 merchandise.

Q. It was the same identical price line? A. The identical merchandise that I bought from, or, at least, my shopper bought from Chezrozette and at Chezrozette's "Fashion Show" in Baltimore, or reputed "Fashion Show"; it was actually a sale of merchandise which took it out of the fashion show category, was being offered by one of the Baltimore stores at \$15 because, in order to dispose of mine, I had to sell it at a reduced price because they would not pay any more than they were actually selling the merchandise for.

Q. How was it embarrassing to Baltimore merchants if the Baltimore merchant were selling merchandise at \$15 that Chezrozette were selling at \$17.95, with an overage in price of \$2.95? A. I think anything that would create confusion in the minds of the customers of the Baltimore stores would have a tendency to embarrass the Baltimore stores.

Q. Do the customers of the Baltimore stores expect the stores to sell the same merchandise at the same price; that is, the same merchandise as to grade at the same price?

> Mr. Albert: That is objected to. There has been no foundation laid to show that this witness knows what the customers expect of the Baltimore stores.

10136

This witness has not been shown to have an intimate, or even casual knowledge with the workings of the customers of the Baltimore stores.

Examinev Averill: I think the gentleman is expert. I think he is qualified to give his opinion on the matter, a matter of that type and character; although I rather have in mind what his answer will be, so I shall most reluctantly have to overrule your objection and give you an exception. Mr. Witness, you may answer the question.

Mr. Albert: On second thought, Mr. Examiner, I shall withdraw the objection.

10139

A. I am not qualified. I cannot speak for the customers. I do not know what they think.

By Mr. Haycraft.

Q. What prices, or, to make it more specific, and get at it without so many questions, these prices that you refer to are prices to the consuming public, are they not, retail prices of the garments, just so the record may be clear? A. Yes, I am speaking of retail prices except in the case there I refer to selling merchandise to a store, and that was a sale to a store by me to simply dispose of the merchandise. Of course, in that case, the merchandise was sold at different from the average retail price.

10140

Q: In the next paragraph we have here, it states: "as mentioned above, we are not asking that cost govern retail in connection with the price line of their merchandise; while this would be desirable, we can appreciate your inability to enforce the provisions of our schedule—The part of the letter that I refer to is "cost governing retail"; what do you mean by "cost governing retail" in connection with price lines? A. Exactly as the letter states. At that time the Baltimore Guild had, in fact, an arrangement whereby cost governed the retail price at which the merchantise was sold in Baltimore.

- Q. What was the relationship between the cost and the retail price at that time observed by the Baltimore retailers? A. I cannot recall that schedule from memory. I think you have it.
- Q. Do you have anything to refresh your recollection from? A. I think you had it in one of the exhibits, if I am not mistaken about it.

(There was a discussion off the record.)

By Mr. Haycraft.

- Q. Have you anything to refresh your recollection?
 A. Yes.
 - Q. Will you please refresh your recollection, then?

10142

Mr. Bramble: Could we see that? I do not know what it is.

(Mr. Haycraft hands paper to Mr. Bramble.)

The Witness: This is not in evidence, just a memorandum.

Examiner Averill: Oh, no, we just had him look at this memorandum. He wanted to refresh his recollection. Of course you may look at it, I do not mean that.

Mr. Bramble: I see.

Examiner Averill: But it is just something he happened to have in his pocket.

Mr. Bramble: All right.

10143

By Mr. Haycraft.

- ⁹ Q. Now, then, having refreshed your recollection, will you testify as to the relation between the cost and the retail price? A. A specific retail price.
- Q. You may make any selection yourself. Take, for instance, a dress that is sold at \$10.95 at retail, what would be the cost of that, according to the price list? A. On

that particular schedule we had no cost governing retail on \$10.95. Any merchandise price at \$6.75 or less, why, could be sold at \$10.95 at the discretion of the store.

Q. Take \$12.95 there, retail price at \$12.95. A. The cost on merchandise retailing at \$12.95 would be anything from \$6.76 to \$7.75. At this point, when we get into this particular phase of it, I would like to clarify this just to a certain extent, namely, that when I say merchandise costing \$6.76 to \$7.75, it was retailed at \$12.95. That held only for a period of three weeks, and not necessarily three weeks from the date a given stare received that merchandise, but for a period of three weeks from when the merchandise, but for a period of three weeks from when the merchandise was first received in Baltimore by any store.

10145.

In other words, store A may get the merchandise in to-day, while store B may not get it in for a period of two weeks from now. Store B, under that set-up, would only be required to mark it at \$12.95 for a period of a week, because the merchandise had already been in town for a period of two weeks.

Now, there is another angle to it that I think I might clarify, and that is when merchandise—any merchandise that any store might buy—is offered in a sale, and cost did not govern the retailer, as an example, a store might pay \$7.75 for a dress, immediately upon its receipt in Baltimore, throw it into a sale that it is offering—they could offer that merchandise at any price they saw fit, below \$12.95 or above, provided, of course, it fit into one of our established price lines.

10146

Q. You would not be allowed to price it between those? A. They could not price it between it; if they went down below \$10.95, we had no suggestions.

Q. In other words, if you bought a dress for \$7.75, you would expect them to sell it for \$12.95 for nearly three weeks, if they were the first one on the market? A. That's it.

Q. But if they were the last one, and there was a safe on, then they could sell it at \$10.95? A. If they were the first one, and there was a sale on, they could sell it for anything they wanted to below \$10.95, and at any of our established price lines from \$10.95 to \$49.95, or at anything they wanted to sell it for above \$49.95. Our price lining only covers retail prices from \$10.95 to \$49.95.

Q. In other words, cost did not enter into your sales?

A. Not into sales, a cost did not enter into it.

Q. Was there any percentage basis of your mark-up between cost and your price line that you established, or were there varying margins or mark-ups? A. Well, I am not an accountant, but, offhand, looking at the cost figures and the retail figures, I would say definitely that there was a variation of mark-ups.

10148

Q. What would be the cost range for your \$15 price line? A. From \$7.76 to \$8.75.

Q. Your \$17.95 price line? A. From \$8.76 to \$10.75.

Q. Your \$19.95 price line? A. We had no \$19.95 price line at the time, cost governing retail was in effect.

Q. By the way, when was that in effect, beginning when? A. Again I am going to have to ask to look at the minute book; I do not have the dates.

(Mr. Haycraft shows minute book to witness.)
Mr. Bramble: You are speaking of a particular

paper now?

Mr. Haycraft: Still referring to the letter of October 19, 1935, to establish what was meant in a certain paragraph of that letter.

Mr. Bramble: That is Exhibit 114.

Mr. Haycraft: Trying to run the thing backyes, that is Exhibit 114.

Examiner Averill: Do you want to see it?

Mr. Bramble: No, I think we saw it yesterday.

The Witness: That paper will be down shortly. Now, we are going to a point where I think that

paper I am looking for will give you some definite reference.

Examiner Averill: Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

Q. After refreshing your recollection from the minutes and other papers which you have before you there, can you give us an estimate of the length of time that those cost prices—cost governing retail price arrangement, or agreement, was in effect by the Baltimore Guild? A. If I understand your question correctly, the Baltimore Guild had such an arrangement in effect for the period of time of about two months.

Mr. Albert: From when to when?

The Witness: From some time in the first half of 1935 until the early part of 1936 or some time around April, 1936, when it was modified.

Mr. Albert: You said two months; did you mean two months?

The Witness:, No, I meant twelve months.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 119, which is a letter from Mr. Golby to yourself, dated October 21, 1935, and advising that David Crystal, Inc., has resigned from membership in the Fashion Originators Guild and he will be no longer entitled to enjoy the benefits of membership in their Guild. I will ask you what, if any, action was taken by your office on receipt of that letter?

Mr. Albert: May we see this?

Mr. Haycraft: Yes.

Mr. Albert: What is that question now?

(Question read.)

Mr. Albert: No objection.

A. None.

By Mr. Haycraft.

Q. None? A. Not a thing.

Q. Did you in any way acquaint the members of your Guild with that information, the Baltimore Guild? A. No, sir.

Mr. Bramble: What did you say?

-The Witness: No, sir.

By Mr. Haycraft.

10154

Q. Referring to Commission's Exhibits 849-A and B, which are the minutes of the Baltimore Guild of February 25, 1935, I call your attention to the second paragraph which says: "The appended report of the committee on price lines was presented by Mr. E. H. Currier, Chairman. Following an extended discussion, and upon motion, which was duly seconded and carried, the report of the committee was adopted, subject to ratification by those members of the Board of Control not present at the meeting." I will ask you whether or not that fixes the date in your mind as to when the cost of price lines was adopted by your local Guild? A. Yes, this is the exhibit that is missing.

(The witness here refers to an unoffered appendment to the exhibit.)

The Witness: I am inclined to feel that subsequent to this meeting—in other words, some time during March of 1935, is when the Baltimore Guild adopted the schedule which terminated during April of 1936.

Charles F. Roycroft-For Commission-Direct.

·By Mr. Haycraft.

- Q. Is Rose E. Phillips a member of your Baltimore. Guild? A. No, sir.
 - Q. No? A. No.
- Q. Did she ever make application for membership? A. No, sir.
 - Q. She did not? A. She did not.

Mr. Bramble: What was that? The Witness: No.

By Mr. Haycraft.

10157

- Q. Did you ever make an investigation, or cause an investigation to be made of the shop operated by Rose E. Phillips at 420 North Charles Street to see whether she would be eligible for membership in the Ladies' Ready-to-Wear Guild of Baltimore, Md., and when I say "by you," I mean if it were made, I do not mean, personally, but did you have the investigation made by those acting under your supervision, direction, and under your authority? A. No, sir.
- Q. No? A. I would like to qualify that answer of "no," by saying that the Rose E. Phillips' shop and her method of operations are known to quite a few members of the Baltimore Guild, and that she was eligible for membership. As a matter of fact, we had one of the officers of the local Guild call on her and extend a personal invitation to join, but she never acted upon the invitation.

- Q. Do you know whether or not she handles Guild merchandise? A. I, personally, do not.
- Q. Are Miss Lauterklos or Miss Sedgewick of "Town and Country," 811 South Charles Street, a member of the Baltimore Guild? A. Both of those ladies are members of the Baltimore Guild but not in the capacity that you refer to.
 - Q. Not in the capacity? A. No.

- Q. Then in what capacity are they members of the Baltimore Guild, if other than those which I mentioned? A. They were accepted as members at that time, at that particular time, and subsequently thereto they dissolved their partnership, and they are both operating individually, and as individuals they are members of the Baltimore Guild. One is trading as "Town and Country," and the other is trading as "Cross Country."
- Q. The firm of Lee, Inc., at 3424 Eastern Avenue, Baltimore, Md.; is that a member of the local Baltimore Guild? A. Yes.
 - Q. It is? A. Yes.
 - Q. How long has it- A. What did you say?
- Q. How long has it been a member, do you know? 'A. What is that that you are referring to there? If I knew what you were referring to there I could save a little time by getting the date from it. I notice you have a paper there.
 - Q. Yes. A. Are you referring to that paper?
- Q. I am referring to Commission's Exhibit No. 128. A. And what is that?
- Q. What is the date of that letter? A. The date of the letter is March 11, 1935.
- Q. Yes. A. To save time, may I answer by saying that they were accepted for membership shortly after the organization of the Guild.
- Q. You mean shortly after the date of that letter? A. Yes. I beg your pardon, shortly after the date of that letter.
- Q. Shortly after March 11, 1935? A. Yes. That fixes it more accurately, shortly after March 11, 1935, or some time thereabouts.
 - Q. The Sloan Strobel firm, 1033 St. Paul Street—is that firm a member of the Baltimore Guild? A. No.
 - Q. No? A. No.

Q. Did you make any investigation there as to whether they were eligible for membership or not, and, if so, what were the results of your investigation, if any? A. The investigation which the Baltimore Guild made at that time, as I recall, indicated that that particular firm is operating an apartment shop and not eligible for membership.

Examiner Averill: What do you mean by "apartment shop"? You have used that several times heretofore.

The Witness: Operating from a private residence—that is, this particular store—that is the particular usage which we give to it in connection with this particular store, sir. We use that differently in connection with some other shops that are located in apartment buildings.

Examiner Averill: You do not mean a shop in a building—a shop in an apartment building?

The Witness: No, not my answer here, no. This is a combination residence and shop, where the individual lives possibly on the second floor and operates on the first floor, or lives in the rear of the first floor and operates in the front part of her place of business.

By Mr. Haycraft.

Q. As a matter of fact, do you know whether there were other businesses conducted in the same block where this store is located? A. I am not in position to answer that at this time.

Q. Would that make any difference in determining whether that particular shop was eligible or was not eligible? A. The location of the shop would not neces sarily change its status.

- Q. No. Commission's Exhibit No. 132, in or wherein you report to Mr. Golby, in reply to a letter from him that the Sloan Strobel establishment is, in your opinion, "an apartment house." A. No. In our opinion.
- Q. In your opinion? A. "In our opinion." Speaking now for the Guild and not for myself.
- Q. Yes, speaking for the Guild, the Baltimore Guild, "an apartment shop," and, as such, is not eligible for membership in the Baltimore Guild. Upon what do you base your own "our opinion," as you called it in the letter? A. The report of the shopper who visited the address in question; namely, 1033 St. Paul Street in Baltimore.
- Q. Well, now, will you state for the record what your rules and regulations are as to eligibility with respect to an apartment shop of the Baltimore Guild? 'A. I have not any. We have no hard and fast rules set up for the eligibility of an apartment shop or shops as members.
- Q. What do you consider an apartment shop that would not be eligible for membership as referred to in this letter?

Mr. Albert: That is objected to as entirely immaterial, incompetent and irrelevant for any purpose whatsoever.

Examiner Averill: Objection sustained.

By Mr. Haycraft ..

- Q. You mean you do not have any rules to determine what is an apartment shop? A. None that I am familiar with.
- Q. Do you have any apartment shops who are members of your Guild? A. It would depend entirely on what you would classify as an apartment shop. We have as members shops located in apartment buildings.

Mr. Albert: But you do not classify those, do you, as "apartment shops"?

10166

The Witness: The shops of the Baltimore Guild? Mr. Albert: Yes.

The Witness: So far as the Baltimore Guild is concerned, why, we would not and are not classifying them as apartment shops.

By Mr. Haycraft.

Q. What is your definition of an "apartment shop"?

Mr. Bramble: I object to that.

Mr. Albert: I object.

Mr. Bramble: It can serve no purpose.

Examiner Averill: Objection sustained, gentlenen. Exception noted to counsel.

10169

By Mr. Haycraft.

Q. I show you Commission's Exhibit 6, A to something else, E—

Q. Why did you write the letter?

Mr. Albert: That question is objected to as entirely immaterial.

Examiner Averill: The objection to the former question is sustained, but the objection to this question is overruled. He may say why he wrote the letter.

10170

A. Because Mr. Golby wrote me, I think, asking for the information.

Q. Was it customary for you to furnish that information to Mr. Golby?

Mr. Albert: Object to the question as immaterial. Examiner Averill: Overruled.

Mr. Bramble: Exception.

The Witness: May I have the question?

(Last question read.)

A. It was customary to furnish it upon request.

Mr. Bramble: Off the record.

(There was a discussion off the record.)

Mr. Bramble: May we consider that Mr. Albert's objections will be for me, too?

Examiner Averill: Yes.

Mr. Albert: And when Mr. Bramble objects it may be considered for me also?

Mr. Bramble: Unless there is something special. Examiner Averill: Yes.

By Mr. Haycraft.

Q. Is Gladys R. Ware, Inc., a member of the Guild? A. No, sir.

Q. Did you make any investigation to ascertain whether she was eligible for membership? A. Yes, sir.

Q. What did you find? A. That she was.

Q. That she was eligible? A. Yes, sir.

Q. Do you know why she did not join your Guild? A. She did join.

Q. I thought you said that she was not a member when I asked you a while ago? A. No, sir.

Q. She is a member? A. No.

Q. She joined and resigned; is that it? A. Yes, she has since gone out of business.

Q. I see. Are you acquainted with Mrs. Mathew Fenton? A. No, sir.

Q. She is not a member of your Guild, the Baltimore Guild? A. Mrs. Edward T. Fenton is. That, I suppose, is the same individual; it may be the wrong Christian name.

Q. I show you Commission's Exhibit No. 137, a letter from J. M. Golby to yourself, and ask you if that refers to Mrs. Edward T. Fenton, or is that the Mrs. Fenton 10172

you have in mind (showing paper to witness)? A. Yes, this is the Mrs. Fenton I have in mind.

Examiner Averill: The witness is now referring to what?

Mr. Haycraft: To Commission's Exhibit No. 137. Examiner Averill: Thank you.

By Mr. Haycraft.

Q. Did she become a member of the Baltimore Guild on or about April, 1935, April or May? A Cannot recall the exact date, but she was accepted for membership in the Baltimore Guild.

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Q. I show you the last paragraph of the same letter-

Mr. Albert: Which one is that? Mr. Haycraft: 137.

By Mr. Haycraft.

Q.—in which Mr. Golby says: "Will you kindly let me hear from you regarding the steps the Ladies' Ready-to-Wear Guild of Baltimore have taken regarding the unfair competition of Mrs. Fenton until such time as she takes a shop and joins the local Retail Guild?" Did you make any investigation pursuant to that request, or take any action pursuant to that request? A. Not as I recall.

Q. Do you know what Mr. Golby referred to there as to unfair competition of Mrs. Fenton? A. Nothing other than as set forth in this letter.

Q. What is a commissionaire, that is what they termed her, is it not? A. My interpretation would be more or less a curbstone broker, somebody that carries their office around in their hat, goes out and solicits orders, and then after she gets the orders, why, attempts to buy them from a manufacturer.

Examiner, Averill: Excuse me just one moment. Those orders—if this person is acting in the capacity such as you spoke of and succeeds in obtaining orders, they attempt to place them with manufacturers; is that the idea?

The Witness: May I enquire-

Examiner Averiff: Those orders are all obtained from retailers, or are they obtained from consumers?

The Witness: It was that type of operator—not speaking of Mrs. Fenton now.

Examiner Averill: I understand.

The Witness: But that type of operator will solicit orders from consumers.

Examiner Averill: Consumers, that is what I want to find out.

The Witness: And they attempt to fill the orders by placing them with a manufacturer. She may have a catalog, or something of that sort, and sell from a catalog.

Examiner Averill: Thank you.

Mr. Martin: In other words she does not carry anything in stock but buys the goods after she gets the order.

The Witness My understanding of a commissionaire is that, yes.

By Mr. Haycraft.

10179

Q. Mr. Neycroft, I now direct your attention to Commission's Exhibit 138, which is a letter from yourself to Mr. Golby under date of May 3, 1935, and ask you if you sent that letter in reply to Commission's Exhibit/No. 137? (A. May I lock at it?

Q. Read the context of it (handing paper to witness). A. Yes, sir.

- Q. Is the Mrs. Mathew Fenton mentioned in Commission's Exhibit 138 the same Mrs. Fenton referred to as Mrs. Edward Fenton? A. Yes, there is only one Mrs. Fenton.
- Q. All right. A. There is no reference to the first name in Exhibit 137, but in the Exhibit 138 she is referred to as Mrs. Mathew Fenton. As a matter of fact, it should be Mrs. Edward T. Fenton, as I recall it.
- Q. Now, in this paragraph, Commission's Exhibit 138: "With regard to Mrs. Mathew Fenton, your suggestions along these lines, I feel are rather well taken. While the Guild, as such, is not in a position to do anything, unquestionably our individual members are, you can rest assured that the full facts will be placed before them at the next meeting, and I feel quite certain your organization can count on their co-operation." Did you, as a matter of fact, acquaint the members with the information you received from Mr. Golby in Commission's Exhibit 137 at the next meeting of the Baltimore Guild as promised in this letter? A. I do not recall definitely, but I am inclined to feel that at the meeting following the writing of this letter, why, Mr. Golby's letter, which is Exhibit 137, was read for the information of the members.

(There was a discussion off the record.)

- Q. I show you Commission's Exhibit 142, a letter from yourself to Mr. Jack Goldston, Fashion Originators Guild of America, dated August 22, 1935. What position does Mr. Goldston hold in the Fashion Originators Guild, to your knowledge? A. I really do not know.
- Q. Did you send this letter to him? Do you recall sending the letter referred to? A. Yes.
- Q. Do you recall the occasion, that is, why you sent that letter?

Mr. Albert: That is objected to, if it please the Court, as immaterial. May I see the letter, Mr. Roycroft?

10181

The Witness: Yes, sir (witness hands paper to Mr. Albert).

Examiner Averill: Read the question.

(Last question. read.)

Examiner Averill: The objection is overruled. He may answer that question if he can, if he recalls why he sent it. He says he does not recall the position that the man occupies.

The Witness: May I have the question, please? (Last question re-read.)

A. In an effort to have the Fashion Originators Guild assist in keeping at least a certain number of copies out of Baltimore. May I just say this off the record to Mr. Haycraft: You are asking about the first part of the letter, I assume?

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Q. Yes, that is the main part. A. Yes.

Examiner Averill: May I see it?

(Counsel hands paper to Examiner Averill.)

By Mr. Haycraft.

- Q. This Mrs. Lapedus mentioned in the letter, that is the Guild shopper? A. The Fashion Originators Guild shopper.
 - Q. The Fashion Originators Guild shopper? A. Yes.
- Q. Was this shortly after she began her duties as shopper? A. Yes, sir.

Examiner Averill: This letter bears date August 22, 1935.

The Witness: Yes.

Mr. Haycraft: Yes.

The Witness: She started some time during August.

By Mr. Haycraft.

- Q. Who is Mr. Morganthau mentioned in the second part of the letter? A. He is divisional merchandise man with O'Neill & Company.
- . Q. Who is Jack Rappaport, and what name does he trade under? A. He trades as Jack Rappaport, Inc.
 - Q. In Baltimore? A. In Baltimore.
- Q. How would you describe him? As a retail dealer here? What sort of a shop does he operate? A. The shop is located in the 200 block of North Charles Street. At that particular time, I think, he was handling either one or two price lines; I do not recall which, and specializing, as far as I know, in copies. Regardless of the fact that he was handling the low-cost range merchandise, why, he did not—that is, he individually did not have occasion to buy from F.O.G.A. houses, but what he was doing was buying copies of F.O.G.A. merchandise, and being—or, rather, having a location in the 200 block of Charles Street, which is right in the heart, so to speak, of our better women's apparel stores, right in that district, why, he was naturally spraying them all over the window.

Q. What price range do you recall that he was selling?

Examiner Averill: Selling these copies, you mean?

Mr. Haycraft: These copies, yes. The Witness: Speaking of retail?

10188

By Mr. Haycraft.

- Q. Yes, retail. A. One of them was a \$10 price. I don't at this time recall the other.
- Q. You refer to it as a shop. Is his place of business confined to ladies' and misses' ready-to-wear? A. Yes, sir.
- Q. And Hixbie is mentioned in the last paragraph of this letter; what sort of a place is that? A. It is a chain

organization located on West Lexington, just west of Liberty, and, for the most part, trying to go Jack Rappaport one better.

- Q. You mean by "chain organization," it has retail shops in a number of cities? A. That is my understanding. I do not know that they operate them all as Hixbie's; I cannot answer definitely for that, but it is one of a chain.
- Q. And both those concerns were not members of the Baltimore Guild, and because of the nature of their business could not become members, did you say? A. No, I would not say that.

Examiner Averill: Now, which question are you answering? That they were not members?

Mr. Albert: The important part that Mr. Hayacrast tacked on, your Honor.

Examiner Averill: I know, but there are two questions there.

Mr. Haycraft: I will withdraw the question.

By Mr. Hayeraft,

- Q. These two concerns, Rappaport and Hixbie, were not members of the Baltimore Guild at that time? A. No, sir.
 - Q. Have they since joined the Guild? A. No, sir.
 - Q. Ever made application to join? A. No, sir.

Mr. Albert: Would you care to have the last half of your question answered now, Mr. Haycraft in the light of the answer that was given, obviously, the last half of the question?

10191

By Mr. Haycraft.

- Q. O'Neill & Company mentioned here, is that a department store? A. Yes, sir.
- Q. A department store handling Guild merchandise, that is, F.O.G.A. merchandise, is that right? A. It is a

department store handling all types of merchandise, as its name would imply.

- Q. I say, it handles F.O.G.A. merchandise? A. Yes, they handle it.
- Q. Was it a member of your local Guild at that time? A. Yes, sir.
- Q. Well, had they attempted to meet the competition of Rappaport? A. You will have to clarify that question a little more—what competition of Rappaport?

By Mr. Haycraft.

Q. I am asking you whether they sold copies—that was my question.

Examiner Averill: No, that was not the ques-

By Mr. Haycraft.

- Q. Whether O'Neill sold copies to meet the competition of Rappaport. A. I can answer that by saying no. Now, if you want to refer to this exhibit, I mean, I can explain this to you.
- Q. I will ask you specifically whether the O'Neill Company, to your knowledge, sold a dress in Baltimore that had been copied by Brenner-Suessman, a manufacturer, from a Guild member? A. May I see that? Will you repeat the question?

10194

(Last question read.)

- A. Are you referring to a dress made by Brenner-Suessman, or to an original made by Altmark?
- Q. I am asking you whether O'Neill sold a dress manufactured by Brenner-Suessman, which was a copy of a dress made by Altmark? A. To the best of my knowledge, no.

Q. Did they display it for sale?

Mr. Albert: That is objected to as immaterial. Examiner Averill: The objection is overruled.

Q. Did they display it for sale?

Mr. Albert: That is objected to as immaterial. Examiner Averill: Objection overruled. Read the question.

(The question was read.)

Mr. Albert: If the witness knows.

Examiner Averill: Yes, if the witness knows.

A. I can only answer that question by repeating what 10196 Mr. Morganthau of O'Neill & Company told me and relate my experience at that time.

Mr. Bramble: We object to that.

Mr. Albert: We object to that.

Examiner Averill: Do not state that at the moment.

By Mr. Haycraft.

Q. Did you go to O'Neill's store to see whether or not they had a copy of the Altmark dresses in stock? A. Yes, sir, that dress.

Q. Did you find one there? A. Mr. Morganthau showed me one.

Q. Did you discuss with Mr. Morganthau the return of that copy to Brenner & Suessman? A. I discussed with him first his reasons for having it.

Q. What reasons did he give you for having it? A. A matter of self-protection.

Q. From what? A. He wanted to protect himself from the sale of that dress in Baltimore, he having the original.

Q. Who was selling a copy of it in Baltimore to his—who did he say was selling a copy of it in Baltimore? A. I do not recall that he said anyone was, now.

-10197

Charles F. Roycroft-For Commission-Direct.

Q. Just to refresh your recollection on that, I will ask you to read the second paragraph or the third paragraph of the letter from yourself to Mr. Weinstein, Commission's Exhibit No. 142. A. We spoke to Mr. Morganthau with the view of having him return the copy to Brenner & Suessman and he indicated that if we could give him any assurances that this copy would not find its way into other Baltimore outlets such as Rappaports and a number of others over which the Guild has no control, he would be most willing to return it to Brenner & Suessman. As a matter of fact, he purchased it and had it confined to him for the sole purpose of protecting his originals.

10199

By Mr. Haycraft.

- Q. I show you Commission's Exhibit 143 and ask you if you received the original of that letter and whether this is in reply to Commission's Exhibit No. 142? A. It is.
 - Q. It is? A. Yes.
- Q. Did you have the information contained in that letter to analyze? A. Yes.
 - Q. And did you convey it to Mr. Morganthau? A. Yes.
- Q. What resulted? A. As I recall the copies were sent back to Brenner & Suessman.

Mr. Bramble. This is a letter? What letter do you refer to? I think the questions of counsel are somewhat obscure.

10200

The Witness: This is the letter from Mr. Golby.

Mr. Bramble: What is the date?

Mr. Haycraft: October 23.

Mr. Bramble: What year?

Mr. Haycraft: '35. Mr. Bramble: 1935? Mr. Haycraft: Yes.

or. Haycraft: Yes.

Mr. Bramble: Thank you.

By Mr. Haycraft.

Q. In this letter I notice that it states that since writing this letter we have learned from Marizon-Rosenberg that Rappaport will return the copies in question and that they will sign a declaration of co-operation. Who is Marizon-Rosenberg? A. It is a New York buying office, as I recall.

Q. Do you know whether or not Rappaport returned the copies and became—and signed the so-called "Declaration of Co-operation" as well? A. No, I do not recall it.

Q. Did you, yourself, invite them to become members of your Guild, or at any time subsequent to August 22, 1935, issue or extend to them such an invitation? A. I do not recall that. If you care to have me, why, I will be glad . 10202 to elaborate just a bit on that.

Q. Do so. A. That letter came from Mr. Golby as I recall, and I think his information was obtained from Marizon-Rosenberg. As I recall the facts as stated in Mr. Golby's letter, why, at the time I received it or shortly thereafter we did pass on Mr. Rappaport. What we were particularly interested in was seeing whether or not copies could be kept out of Baltimore and Rappaport was making a particular effort to buy up all of the copies that he could get hold of and when we saw him he told us he knew nothing about the commitment of the Marizon-Rosenberg as stated in that letter, but when he went to New York he would find out about it.

Q. Was that the last contact you had with him about 10203 it? A. I did not have any contact with him.

Q. Anyone from your organization? A. No, I think there was some further contact but he never joined the Baltimore Guild.

Q. Never? A. Never.

Q. Did he discontinue handling copies? A. That is debatable. I have heard indirectly that he did and I have heard indirectly that he did not. I do not know.

Q. I show you Commission's Exhibit No. 144, a letter from Mr. Golby to yourself, and there does not appear to be any date on it, I do not know why, and I will ask you whether or not you complied with the request contained in that letter?

Mr. Albert: May I see that letter, please?

Mr. Haycraft: Yes.

(The letter was handed to Mr. Albert.)

Mr. Albert: I do not see the materiality of this, your Honor, but it will probably be less painful not to object. This is just a little social chit-chat between the two.

10205

(The letter was handed to the witness.)

A. I do not definitely recall whether I complied with the letter or not.

Mr. Albert: It is now 12.30, Mr. Examiner, shall we adjourn for lunch at this time?

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: We will go ahead until 1 o'clock.

By Mr. Hayeraft.

Q Referring to Commission's Exhibit No. 146, who is Mr. F. H. Alperstein, mentioned in there? A. He is, as 10206 far as I know, the principal owner of Stanley's.

Q. That is a Baltimore organization? A. Yes.

Q. It is? A. Yes.

Q. Does he also own a firm named "Gaxton's"? A. Again I will have to say to the best of my knowledge he is the principal owner.

Q. Does both Gaxton's and Stanley's handle ladies' ready-to-wear? A. In the sale of ladies' ready-to-wear Gax-

ton's does, and also accessories, and Stanley's handle ladies' ready-to-wear.

- Q. They have been members of the Baltimore Guild up to August 27, 1935? A. Yes.
- Q. Referring to Commission's Exhibit No. 149, who is the A. Weinstein mentioned in the first paragraph of that letter, the letter from yourself to Mr. Golby under date of October 25, 1935? A. He is the retailer located at 360 North Charles Street in Baltimore, primarily engaged in the sale of furs.
- Q. Did you, on or about that date; namely, October, 1935—did he, rather, on or about that date, October, 1935, go into the ladies' ready-to-wear business? A. He had been in it.

10208

- Q. He had been in it? A. Yes, sir.
- Q. In the last line of that letter, after reciting the facts that you have there, you make the following statement, "Will you please investigate these matters and let me hear from you promptly." What investigation did you expect Mr. Golby to make?

Mr. Albert: That is objected to as calling for a conclusion of the witness and he is certainly incompetent to testify to it and I cannot see any materiality as to what he expected Mr. Golby to make in the way of an investigation under certain circonstances.

Examiner, Averill: Read the question.

(The question was read.)

Examiner Averill: Overruled. I think he can answer what he expected.

Mr. Bramble: Exception.

Mr. Albert: Exception.

A. I expected him to check up with his records and with certain of his members to ascertain whether the informa-

tion that had been given me in Baltimore was founded on fact.

- Q. With respect to the stores—first let me ask you this, with respect to the source of supply of these various retail dealers. Weinstein, Rice and so forth. A. Yes.
- Q. At the time this letter was written in October, 1935, was E. A. Weinstein a member of the Baltimore Guild?

Mr. Albert: That is Commission's Exhibit No. 149?

Mr. Hayeraft: 149. Mr. Albert: 149? Mr. Hayeraft: Yes.

10211

By Mr. Haycraft.

- Q. Was he? A. Not as I recall.
- Q. Did he later become a member? A. Yes, sir.
- Q. Do you recall when? A. Shortly after the time of this correspondence.
- Q. Did Bertram S. Rice ever become a member? A. No, sir.
- Q. Did you ever solicit them to become a member? A. I asked Mr. Rice to make application.

Mr. Albert: Now, if your Honor please, for the last hour and fifteen minutes we have heard a series of questions as to whether Mr. A, B, C, D were members of the Guild, without any information being elicited, in my humble opinion, as to any materiality, and may I ask that counsel be curtailed on this point unless Mr. Haycraft will state what he intends to show because if he seeks to elicit a certain type of information it may be that we can concede that certain people were members of the Guild and certain people were refused membership in the Baltimore Guild. I do not think we should be required to sit

here and listen to six or seven questions on each name to no purpose at all.

Examiner Averill: I do not have the correspondence before me and I cannot say, because I do not know. I will permit the examination to continue.

By Mr. Haycraft.

Q. Mr. Roycroft, you testified yesterday, I believe, that the agreement that you had with the Baltimore Guild that the agreement that the Baltimore Guild had with the Fashion Originators Guild of America, Inc., rather, expired on December 31, 1935, is that correct? A. The last agreement that we had with them expired as of that date.

Q. Why was it not renewed? A. It was not renewed on advice of counsel.

Q. Was there any controversy between the Baltimore Guild and the Fashion Originators Guild of America at or about December, 1935? A. I do not recall any then at that time. There was some—I do not know whether I would refer to it as a controversy, we had some correspondence or some communications, verbally or otherwise, between the Guild and the Baltimore Guild, and the Baltimore Guild had under consideration the advisability of renewing its contract. As a matter of fact, the Guild placed itself on record to renew the contract subject to the approval of, shall I say, of counsel.

Examiner Averill: You mean the Baltimore Guild?

The Witness: The Baltimore Guild it was who had it up for consideration; that is up for consideration of the renewal of the contract. The Board of Directors and subsequently, the members at a general meeting acted favorably with the proviso, however, that we would be governed by our counsel's opinion, and I think shortly thereafter, at least,

possibly, it may have been within a day or so, I do not know exactly the date, the dates are not clear in my mind, but right around that time is when the Federal Trade Commission's bill of complaint, I think, was filed. With that in mind, I suppose, our counsel recommended that we defer, at least that we not renew the agreement which had expired as of December 31, 1935.

Cross-examination by Mr. Albert.

Q. I show you Respondents' Exhibit 75 for Identification, and ask you'if you received this letter, Mr. Roycroft, from Mr. Golby? A. Yes.

Mr. Albert: I offer that letter in evidence.

(The letter, heretofore marked for identification Respondents' Exhibit 75, was marked as an exhibit and received in evidence.)

By Mr. Albert.

Q. Was that statement put in the letter by reason of your knowledge that the Fashion Originators Guild would not enforce the local Guild rule with respect to price-line maintenance? A. I think the second sentence in that paragraph gives the answer. As I said, that while this would be desirable, we can appreciate your inability to enforce that provision of our schedule, meaning the schedule of the Baltimore Guild.

Q. Had the Fashion Originators Guild at that time engaged in any practice of sustaining or assisting in the maintenance of that fair trade practice of the Baltimore Guild, Inc.? A. Meaning the schedule now in effect?

- Q. Right. A. I mean in effect at that time?
- Q. Right, yes. A. No, sir.

Q. When did that schedule, in so far as the Baltimore Guild was concerned, cease to operate? A. Some time during April of 1936.

• Q. And since that time have you in any way attempted to enforce any such schedule, or similar schedule, of cost governing retail? A: No, sir.

Q. In so far as price lining is concerned, in and of itself, as distinguished from a price line which includes cost governing retail, when was the price lining adopted by the Baltimoré Guild? A. Price lining?

Examiner Averill: What is the use of going over all that again? It is all in the testimony.

Mr. Albert: If your Honor will bear with me for just a moment. I do not believe that the record is quite as clear as the explanation that has been given to your Honor as the result of all of the "off-the-record" conversations, and, while I agree that undoubtedly your Honor is familiar with what I am about to ask the witness, I do not think it is reflected in the record itself, and, if you will bear with me, I will try to make it just as short as possible, in order to fill the holes in the record properly.

Examiner Averill: All right, sir.

A. Price lining, as such, was adopted originally during. September of 1933, or some time thereabouts, and continued as price lining until, I believe, some time around March of 1935.

10221

By Mr. Albert.

Q. How is it that this practice of price lining was adopted? As a result of what condition in the industry in Baltimore? A. A conglomeration of prices locally that was more or less confusing, I might say, to the consumers as a whole.

Q. Would you be a nttle more specific in saying what you mean by "confusing"? A. Well, I take one price line as an example, a \$10.95 price line. Prior to the adoption of price lining by the Guild, there may have been as many different prices around that figure as there were retail stores in town. Now, one store is a \$10.95, maybe another \$10.89, another \$10.50, \$10.75, and numerous others. As the result of which, in my humble opinion, I do not think the average consumer, meaning customer, could be entirely clear as to whether the values of one store were better or probably more attractive than the values the other store was offering at a price line somewhere near there. Now, to eliminate that confusion is when we more or less adopted this standard schedule of price lines.

10223

Q. Was that arbitrarily adopted, or did that result as a result of agreement amongst the local retailers?

Mr. Hayeraft: That is a bit curious in form, "arbitrarily adopt." I do not know what that means.

Mr. Albert: All right, I withdraw the question.

By Mr. Albert. .

Q. I ask you, Mr. Roycroft, to produce, please, the minutes of the Board of Control, September 23, 1933.

(The witness hands paper to counsel.)

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Mr. Albert: I offer in evidence minutes of the Ladies' Ready-to-Wear Guild of Baltimore, of the Board of Control thereof, dated September 23, 1933, signed by Mr. Roycroft as secretary, particularly the latter half.

Mr. Haycraft: No objection.

Examiner Averill: You have seen it?

Mr. Haycraft: Yes.

Examiner Averill: Gentlemen, the paper that has just been submitted, which purports to be min-

utes of the Board of Control of the Ladies' Readyto-Wear Guild of Baltimore, September 23, 1933, will be received in evidence and marked Respondents' Exhibit 76.

(The paper was marked Respondents' Exhibit 76, and received in evidence.)

By Mr. Albert.

Q. Was your original price-line policy adopted pursuant to these minutes of September 23, 1933, being Respondents' Exhibit No. 76? A. Yes, sir.

Q. Had the Fashion Originators Guild any hand whatsoever in the establishment of that price line? A. No, sir.

- Q. As a matter of fact, at that time, did they even know of the existence of it? A. No.
- Q. Did the Fashion Originators Guild at any time in the establishment of your price line, in so far as the schedule was concerned, have anything to do with the fixation of the various price lines? A. No, that was purely local.
- Q. Now, except for the period from April, 1935, roughly speaking, to April of 1936, your price line in no way required a retailer to sell a particular cost-price dress at any particular sale price, did it? A. No, sir.
- Q. And, as a matter of fact, if a retailer purchased a dress for \$2 and wanted to sell it for \$50, he could do so, he could do so provided he sold it within the price line of the bracket of your lining policy; is that not so? A. Yes.
- Q. And if a retailer purchased a dress for \$22.75 and wished to sell it at 50 per cent. of that price, he could do so within the particular price line established by the schedule at that time, could he not? A. Yes.
- Q. Now, then, you have testified with respect to the particular off-price sale as concerns the Bonwit Company,

10226

and the permission that was given to sell goods at that time. Would you mind explaining that more in detail, especially as regards the experimental nature of that permission, and the test that was made for the benefit of all the retailers of Baltimore at that time?

Examiner Averill: Is that not already in? Off the record,

(There was a discussion off the record.) Examiner Averill: On the record.

A. During November of 1933 Mr. Lester. Bonwit of Bonwit-Lennou at one of our meetings raised the question concerning clearance sales, and the advisability or desirability of permitting clearance merchandise when offered in clearance sales to be sold at what we term off prices. He was quite insistent, and, as the result, he was given permission to run a clearance sale, using off prices. At the same time Hutzler Brothers Company, for a time approximately thereabouts, ran a clearance sale, using regular prices. Subsequently, a comparison as to the results obtained indicated that the use of off prices by Bonwit-Lennon had been no more effective than the use of regular prices by Hutzler Brothers Company, and it was definitely decided by the Baltimore Guild that in the future all merchandise should be offered at regular prices. no exception would be made for clearances.

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10229

By Mr. Albert.

- Q. Has any complaint ever been made by the Ladies' Ready-to-Wear Guild of Baltimore, Inc., to the Fashion Originators Guild of the failure of any member of the Baltimore Guild, Inc., to comply with the price line established by the Baltimore Guild? A. No, sir.
- Q. And, of course, since no complaint was made to the Fashion Originators Guild, no action was taken by the

Fashion Originators Guild on any dispute that might have arisen between the Baltimore Guild, Inc., and its local retailers? A. That is right.

Mr. Albert: May I have the minutes of April 17, 1936, please?

(The witness hands minutes to counsel.)

The Witness: You may as well take the book.

Mr. Albert: Thank you.

By Mr. Albert.

Q. Bringing you down to the O'Neill purchase of alleged copies, Mr. Roycroft. When the existence of these copies in the O'Neill store was called to the attention of the Fashion Originators Guild what, if anything, happened, to your knowedge? A. They had insisted that notwithstanding the reasons advanced by O'Neill & Company, that under the terms of the existing contract between the two Guilds, and the declaration of co-operation which had been signed by O'Neill & Company, that the copies would have to be returned to Brenner-Suessman.

Q. Is it not a fact, to your knowledge, Mr. Roycroft, that in so far as the O'Neill Company was concerned, they purchased the originals of these dresses, and they purchased the copies of the original dress that they had formerly purchased, with no intention whatsoever of selling these copies, but with the intention of absorbing a loss thereon in order to protect their original purchase? A. That is as I understand it from Mr. Morgenthau, because when I called at O'Neill & Company the copies were not on display, but were obtained by someone in the department, at his request, producing them from behind the partition, or wherever it was they keep the merchandise.

Q. And is it not a fact that these copies were purchased by O'Neill by reason of the thought, in line with the O'Neill Company, as expressed to you by Mr. Morgen10232

thau, that the sale of these copies of the original dress, which had been confined to O'Neill, would cut the heart out of the market of the original dress? A. That is the way he expressed himself to me.

> Mr. Albert: May I have Commission's Exhibits 842 and 855?

(The witness hands papers to Mr. Albert.)

By Mr. Albert.

- · Q. I show you Commission's Exhibits 855-A and B, Mr. Roycroft, and ask you if it is not a fact that there was nothing done, in so far as that letter is concerned, and that it is merely an invitation to discuss certain matters (handing exhibit to witness)? A. There was nothing done locally as the result of this letter being received in Baltimore.
- Q. Directing your attention to Commission's Exhibits 843-A to G. Mr. Roveroft, I notice that that agreement is signed by some twenty-seven parties, being retailers who are members of the Ladies' Ready-to-Wear Guild of Baltimore. Did each of those parties, to your knowledge, subscribe to the fact that consumer confusion, loss of confidence, and lack of style consciousness, had greatly been contributed to by style pirating and copying? A. Yes, sir.
- Q. Did all of those parties referred to subscribe to the opinion that these practices of style piracy and copying 10236 were harmful and detrimental to the consuming public, and were unethical? A. There were none expressed in my presence.
 - Q. Was any communication sent to the Baltimore Guild dissenting from any of the propositions or agreements set forth in Commission's Exhibits 483-A to G? . 8

Mr. Haycraft: Same objection.

Examiner Averill: The objection is overruled.

A. I received none.

By Mr. Albert.

Q. I see. Would you be good enough, Mr. Roycroft, to explain the effect of apartment house shops upon the Baltimore market? A. I am not certain, Mr. Albert, being a non-retailer, that I am qualified to answer that.

Q. Very well.

Mr. Albert: No further questions, your Honor.

Mr. Haycraft: I only have about two.

Mr. Bramble: I do not think I will have many,

so it will not take long, Mr. Haycraft.

Mr. Haycraft: All right.

By Mr. Bramble.

Q. Mr. Roycroft, does the price-line schedule referred to in the several exhibits, and in the testimony, apply to anything other than interstate business of the members of the Baltimore Guild? A. No, sir.

Q. Could any merchant outside of the members of the Baltimore Guild purchase merchandise from the members of the F.O.G.A., if you know?

Mr. Haycraft: When?

10239

By Mr. Bramble.

Q. During this period that we have had the contract—that they had the contract? A. Yes, sir.

Q. I believe you testified that you have no contract with them at this time, and that the contract was terminated December 31, 1935; is that correct? A. Yes, sir.

Q. Was the Baltimore Guild ever a member of the F.O.G.A., or any of its members? A. No, sir.

- Q. You have not answered that, Mr. Roycroft. A. The Baltimore Guild was never a member of the Fashion Originators Guild, nor was the Baltimore Guild ever a member of any of the affiliated memberships of the Fashion Originators Guild.
- Q. Who were eligible for membership in the Ladies' Ready-to-Wear Guild of Baltimore? A. Any legitimate dealer operating in Baltimore.
- Q. Was not the whole purpose of the Ladies' Ready-to-Wear Guild of Baltimore to prevent what is known as "style piracy"; principally? A. That was the principal purpose for which the Ladies' Ready-to-Wear Guild of Baltimore was formed.
 - Q. Were members of the Ladies' Ready-to-Wear Guild of Baltimore restricted to the purchase of ladies' garments from members of the Fashion Originators' Guild of America, Inc., under the terms of the agreement? A. No. sir. o
 - Q. The members of the Ladies' Ready-to-Wear Guild of Baltimore, did such members buy such garments from manufacturers other than members of the Fashion Originators Guild of America during the continuance of their agreement between the Ladies' Ready-to-Wear Guild of Baltimore and the Fashion Originators Guild of America, Inc.?

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Mr. Haycraft: I object to that. There is no foundation laid for this witness answering that question; this witness is not in the retail business; this witness is not a retailer; he is not in position to know what the members of the Ladies' Ready-to-Wear Guild of Baltimore did, and, of course, anything he would say would be hearsay on that subject.

Mr. Bramble: If you know.

Examiner Averill: If he knows he may answer that; and if he does not he will say so.

A. Yes, sir.

By Mr. Bramble.

Q. May any members of the Ladies' Ready-to-Wear Guild of Baltimore retire from its membership at any time? A. Yes, sir.

Mr. Bramble: I think that is all, your Honor. Examiner Averill: Any redirect examination, Mr. Haycraft?

Mr. Haycraft: Yes.

10244

Redirect examination by Mr. Haycraft.

Q. Referring to Commission's Exhibits 855-A and 855-B, you were asked if anything was done with respect to that letter. I will ask you whether or not it was not read at a meeting of the Ladies' Ready-to-Wear Guild of Baltimore and discussed at the meeting? A. As I understand the question that was asked me originally, it did not have to do with more or less formal handling of the correspondence, but I understood it to mean was anything done as a result of that letter coming into Baltimore, or anything done by the Baltimore stores, members of the Ladies' Ready-to-Wear Guild of Baltimore as a result of that letter coming into Baltimore. To such a question as I understood it my answer was no.

- Q. You mean with respect to the holding of August promotional sales, and so forth? A. The elimination of August promotional sales, pre-seasonal sales, and matters of that sort, in general, I would say.
- Q. I take it, then, that it is your testimony that the subject-matter of the letter was spoken about, and discussed at a meeting of the Ladies' Ready-to-Wear Guild

of Baltimore, and it was decided not to follow the suggestion of the Fashion Originators Guild of America, Inc., with respect to the elimination or restriction of the August sales as therein referred to? A. As I remember that letter, it was not directed to the Ladies' Ready-to-Wear Guild of Baltimore; that is, to the Guild itself, but was directed to the individual retailers in Baltimore asking for opinions, and what not, as to the suggestions contained in it.

- Q. That is true, but you have already testified, have you not, that this matter was discussed at the meeting of the Ladies' Ready-to-Wear Guild of Baltimore, and that those who attended knew of it, and that the contents of that letter were discussed at the meeting of the Ladies' Ready-to-Wear Guild of Baltimore? A. I am inclined to believe that it was discussed. As a matter of fact, I am reasonably certain that it was discussed by some of the representatives who had received it at one of the meetings of the Ladies' Ready-to-Wear Guild of Baltimore.
- Q. Was a decision reached that they would not follow the situation with respect to the restriction of August coat sales? A. Yes—well, I do not recall offhand what the decision was, now that I think the matter over, but I do know that nothing happened.
- Q. Then your answer is that you do not recall? A. I do not recall. In other words, August coat sales continued that year, and for that reason I say I do not recall offhand what the decision was, but as I say, I do know very definitely that nothing happened to change the situation as it then existed.
- Q: Do you have Commission's Exhibits Nos. 843-A to G in front of you? A. Just a moment and I will see if I can find it. I have it.
- Q. I will ask you how many of the signatures on that exhibit were made in your presence? A. All but, I would say, four or five.

10247

- Q. Did you observe that each one of them read the full text of the agreement before they signed it? A. The ones that were signed in my presence?
- Q. Yes. A. There was no necessity for observing it because they were signed after a meeting at which the entire agreement was read to them.
- Q. This is the agreement that was placed before them for their signature after the meeting? A. As far as I can recall, there was a special meeting held for the expressed purpose of reviewing this agreement after which the agreement was placed on a table and all of them who cared to do so, or who had authority to do so—and had authority to do so, rather—I will put it that way—and had authority to do so, signed it.
- Q. And the rest of the signatures were obtained through the mail? A. No, sir. The rest of the signatures were obtained by a representative working under my jurisdiction. I spoke to the individuals in question and made a definite appointment with them for someone to bring the agreement up to their office and they carried it up and obtained the signature and brought the agreement back to me.
- Q. Do you know who wrote the agreement? A. The agreement, in its present form, was prepared at a board meeting of the Ladies' Ready-to-Wear Guild of Baltimore on September 11, 1933.
- Q. Where did the first draft of the agreement come from; did it come from the members of the Ladies' Ready-to-Wear Guild of Baltimore or from the members of the Fashion Originators Guild of America, Inc., or from the Fashion Originators Guild of America, Inc., itself? A. Speaking of the agreement that was signed?
- Q. The first draft that came before that. A. The first draft of what?
 - Q. Of the agreement. A. Of this agreement?

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- Q. Between the Ladies' Ready-to-Wear Guild of Baltimore and the Fashion Originators Guild of America, Inc. A. Which was signed?
- Q. No, the first agreement that came in for consideration.

Mr. Albert: That is objected to as entirely immaterial and is entirely too far remote to be of any value whatsoever. Now, we are not talking about this agreement but we are talking about all sorts of papers and documents, and possibly discussions and things of that sort which led up to the agreement itself. Since the agreement is supposed to represent a meeting of the minds of the parties thereto, it seems to me that this is quite immaterial.

Mr. Bramble: I object on the same ground.

Examiner Averill: The question is this: Was the draft of an agreement which finally this became the document, the agreement which is in evidence, received from points outside of the City of Baltimore and submitted to your membership for consideration, or did it originate with your membership; that is the point. If you know, will you please say so, and if you do not know will you say so, too? In any event, will you tell us, please, what your information is in that regard?

The Witness: I do not know definitely. I do not have, or, at least, I do not know of when the original draft was presented the first time. I am not in a position to say as to that. In fact, I do not know who the original person was that presented it at the time that that occurred.

By Mr. Haycraft.

Q. Did Mr. Hutzler first present it? A. There is nothing in the minutes to indicate who presented it, and I cannot recall. That took place better than three years ago.

10253

Q. Let us see the minute book a minute.

Mr. Albert: I have no objection to that.

(Mr. Haycraft thereupon examined the minute book for a few minutes and then presented it to the witness, who read one of the minutes therefrom.)

By Mr. Haycraft.

Q. Did Mr. Mehling present the agreement originally at a meeting of September 5? A. Yes, I will have to amend my answer to the first question. I see that in the minutes of the meeting prior to the one of September 11, why, the agreement was presented by Mr. Mehling, who is the secretary of the Retail Merchants Association of Baltimore.

10256

- Q. You were asked about whether the rules and regulations of the Ladies' Ready-to-Wear Guild of Baltimore were used for intrastate business. A. I beg your pardon.
- Q. You were asked on cross-examination whether or notthe rules and regulations of the Ladies' Ready-to-Wear Guild of Baltimore were only used in the intrastate business of those firms. A. I do not think that is the exact question that I was asked.

Mr. Bramble: It was the price-line schedule that was referred to.

By Mr. Haycraft.

- Q. Was your answer restricted to the price-line schedule? A. Yes, the way I thought the question was worded, and as I answered it.
- Q. By that do you mean that when the members of the Ladies' Ready-to-Wear Guild of Baltimore sold goods out of the State of Maryland that they did not observe the price-line agreement? A. Sales consummated outside of the State of Maryland, why, in my opinion as secretary of the Association would not be subject to the price-line agreement that we had in effect.

- Q. What do you mean, they would not be subject to it? A. The store would be free. In other words, if a store set up a show, or was selling outside of the borders of Maryland, and sold merchandise, why, they were transactions outside of the City of Baltimore and outside of the State of Maryland. We, in the Ladies' Ready-to-Wear Guild of · Baltimore, as I understand it, as secretary, why, made no effort to tell the stores about what price that merchandise ought to be sold at.
 - Q. How about advertising in the newspapers that went beyond the State line? A. What do you mean about advertising in newspapers that went beyond the State line?
- Q. I say, would you expect the rule, or would the rule ' be observed in the advertisements of companies in, say, the "Baltimore Sun," with respect to prices in regard to merchandise offered for sale beyond the State line? other words, were any prices by members that might have advertised, would they appear under those conditions in editions of the paper going beyond the border for sales intended to be made beyond the border?
- Q. Yes. A. No, if I understand your question, which I am not at all sure I do.
- Q. There was no restriction on that contract, is that the idea you mean to convey? A. When you say "no restriction" you mean that the store, or, first, rather, so that I may get this correctly, rather than say what I think, would you mind being a little specific, Mr. Haycraft, and tell me what you mean?

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- Q. By that I am now asking you whether it would be allowed to use prices not in line with the price line in the Baltimore newspapers? A. You mean would they be allowed to advertise prices not in line with the price-line schedules, and place those advertisements in the Baltimore newspapers?
- Q. Yes. A. I do not think so. I certainly do not think that the schedule would permit of that, no.

Q. So that whether anything in your rules and regulations should state that this would only apply to the City of Baltimore or the State of Maryland, that would be the case? A. I beg your pardon?

Q. So that whether there is anything in your rules and regulations which state that this would only apply to the City of Baltimore, or the State of Maryland, that would be the fact?

Mr. Bramble: I object. Mr. Albert: I object.

Examiner Averill: Sustained.

By Mr. Haycraft.

10262

Q. You said that merchants other than members of the Guild could buy merchandise, did you, Mr. Roycroft? A. Members of what Guild are you speaking of now?

Q. The Ladies' Ready to Wear Guild of Baltimore. A. The Ladies' Ready to Wear Guild of Baltimore?

Q. Yes. Can merchants, not members of the Ladies' Ready-to-Wear Guild of Baltimore, buy Guild merchandise? A. Yes. That is specifically stated in the contract or in the agreement between the two Guilds.

Q. Are there any members of the Ladies' Ready-to-Wear Guild of Baltimore that have not signed the so-called "Declaration of Co-operation" with the Fashion Originators Guild of America, Inc.? A. None that I know of.

Q. Can a retail merchant who has not signed the socalled "Declaration of Co-operation" with the Fashion Originators Guild of America become a member of the Ladies' Ready-to-Wear Guild of Baltimore? A. We have had no cases along those lines that I can recall at the moment.

Mr. Albert: I should think that is an answer to that question if your Honor please.

By Mr. Haycraft:

Q. Do you not restrict your membership to merchants who have signed the so-called "Declaration of Co-operation"—so-called "Declaration of Co-operation" with the Fashion Originators Guild of America, Inc.? A. Again, I have got to repeat that that condition has never arisen as far as I can recall. As I mentioned earlier in my testimony, the primary purpose of the Ladies' Ready-to-Wear Guild of Baltimore, when it was formed, was for style protection. If a member is not sold on style protection, or, at least, if a dealer is not sold on style protection and refuses to sign the declaration of co-operation with the Fashion Originators Guild of America, Inc., why, why would he want to come along with the Ladies' Ready-to-Wear Guild of Baltimore, so to speak, in its efforts to eliminate style piracy?

Q. What is your definition of a "legitimate dealer"?

Mr. Bramble: What?

(Question read.)

Mr. Bramble: I object to that.

Mr. Feldman: That is an unfair question. That is a very unfair question.

Examiner Averill: Overruled. The witness may answer if he knows.

Mr. Allbert: If he knows.

Examiner Averill: The witness has testified that any legitimate dealer could become a member of the Ladies' Ready-to-Wear Guild of Baltimore.

The Witness: I might answer it by saying that the board of the Ladies' Ready-to-Wear Guid of Baltimore would, in all likelihood, be the proper body to determine what constitutes a "legitimate dealer," in so far as the acceptance into and for membership into the Ladies' Ready-to-Wear Guild of Baltimore is concerned, rather than the secre-

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tary, so that my opinion, I do not think, would carry a great deal of weight.

Q. What did you have in mind when you made that statement on cross-examination? A. A dealer in ladies' ready-to-wear and operating along the established business lines, or accepted business lines, in Baltimore.

Examiner Averill: Gentlemen, we will adjourn to 10.30 o'clock to morrow morning.

(Whereupon, at 4.15 o'clock P. M., November 11, 1936, the hearing in the above entitled matter was adjourned.)

10268

Room 401, United States Appraisers Store Building, Baltimore, Maryland, November 12, 1936.

Met, pursuant to adjournment, 10.30 A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same Appearances:)

PROCEEDINGS.

Examiner Averill: Gentlemen, the hearing will come to order. You may proceed.

Mr. Haycraft: I will call Mr. Hutzler.

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CHARLES J. HUTZLER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Will you state your name? A. Charles J. Hutzler.

- Q. Mr. Hutzler, you have given your full name to the reporter? A. Yes. Charles J. Hutzler.
 - Q. Where do you live? A. Baltimore County.
- Q. Where did you say you lived? A. Pikesville, Baltimore County, Maryland.
 - Q. What is your occupation? A. Merchant.
 - Q. Merchant? A. Yes.
- Q. What type of a store are you associated with? .A. What?
- Q. What type of a store are you associated with? A. Department store.
- Q. The name of that store is what? A. Hutzler Brothers Company, Inc.
- Q. What position do you hold in that store? A. I am secretary of the corporation and assistant general merchandising manager.
 - Q. How long have you been in that position? A. Which?
- Q. Secretary and assistant general merchandising manager? A. I have been assistant general merchandising manager for a little over a year, and secretary of the corporation since the first part of October.
- Q. How long have you been associated with the store?
 A. Practically eleven years.
- Q. Who is president of the company? A. Albert D. Hutzler.
 - Q. Albert D. Hutzler? A. Yes.
 - Q. Is he your brother, father, or cousin? A. Cousin.
- Q. Do you ever merchandise or have anything to do—in other words, before you were assistant merchandising manager or associate merchandising manager—by the way, which is it? A. Oh, did I say "associate"? I meant assistant.
 - Q. Assistant merchandising manager? A. Yes.
- Q. Before you were assistant merchandising manager what, if anything, did you have to do with the sales of the store? A. Well, preceding my going into the general mer-

chandising part of the business, I was divisional merchandising manager of the ready-to-wear department, which position. I have held since September, 1930, and until about June, 1935.

- Q. In that position you have just referred to, do you have under your supervision the ladies' ready-to-wear department in the store? A. Yes.
- Q. In that position when you were in charge of the ladies' ready-to-wear department, what garments—just give us a brief description of the type of merchandise in ladies' ready-to-wear that Hutzler Brothers Company, Inc., handle in the price ranges? A. We handled dresses, I would say, silk dresses from about \$4.75 cost all the way up to the top, and, of course, cotton dresses also at certain times of the year, and approximately the same relative prices in the other departments like coats, furs and sportswear. Then, we also had a basement department which went into lower prices, but those departments did not head up to me.
- Q. You mean the departments that you had under your division all sell dresses costing \$4.75, and what was the retail price range of them? A. We generally, I believe, we tried to get \$7.95 or \$8 for our \$4.75 dresses that were sold in the regular way. Does that answer your question?
 - Q. Up to about how high do you go? A. To the top.
- Q. What do you mean by "the top"? A. We have a French room, as we call it, where we have had dresses and costumes selling, maybe, as high as \$400 or \$500.
- Q. Where do you buy the merchandise which you sell in these various departments that were under your supervision? A. In the general wholesale market.
- Q. Where is that? A. Anywhere, but primarily in New York.
- Q. Where, besides New York, do you buy? A. Boston, Chicago, occasionally from the West-Coast. Those are the primary markets.

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Q. Do you import any? A. Not in recent years we have not imported any dresses. There may be certain articles of sportswear that we imported.

Q. This French shop that you referred to a moment ago had dresses selling as high as \$500. Were they all of domestic manufacture? A. Yes.

Q. They were? A. Yes. .

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When did you first learn of that organization? A. I think probably as far back as 1932.

10277

Q. Do you recall what you first learned about it; that is, how it came to your attention? A. As I recall, at that time we were having a great deal of difficulty because of the style piracy situation. The existing copyright laws and patent laws did not adequately protect the originator of style merchandise, and as a matter of means, or a study to give that originator the protection afforded by the copyright and patent laws for other lines of manufacture, or for other lines of merchandise, we found, I might say in passing, that it did not give it. . In other words, the existing copyright laws and patent laws did not adequate protect the originator of style merchandise, and some other lines, a means was sought to give that originator the protection afforded by the copyright and patent laws for other lines of merchandise. The Fashion Originators Guild of America was the outgrowth of that. Some handful of better manufacturers-originally, I think, determined on a program that would correct that situation.

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Mr. Haycraft: I move to strike the answer as not responsive to the question.

Mr. Albert: Your Honor please, that answer is the most perfect answer that could possibly be given to Mr. Haycraft's question. It may be that Mr. Haycraft does not particularly like the answer to the question he got, but it is certainly a perfect answer to it.

Examiner Averill: Well, it may be that the answer is pretty long, but it is responsive to the question. The motion to strike, therefore, is denied.

By Mr. Haycraft.

- Q. Did you have anything to do with the organization of the Fashion Originators Guild of America? A. Nothing whatsoever.
- Q. How did you learn as to the facts that you have just recited as to its purposes?

Mr. Albert: That is objected to as immaterial. Examiner Averill: Objection overruled.

Mr. Albert: Exception.

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A. The facts in my answer, I mean, were in discussion generally; in fact, were common discussion, really, at that time between many manufacturers and many retailers.

By Mr. Haycraft.

Q. My question is how you learned what the purposes of the Fashion Originators Guild of America were?

Examiner Averill: His answer is that it was a matter of common knowledge, and it came to him in that way. That is his answer boiled down.

10281

By Mr. Hayeraft.

- Q. You said that you had heard of the Fashion Originators Guild of America as early as 1932? A. Yes.
- Q. Were you solicited to co-operate in any way with the Fashion Originators Guild of America in 1932, and by "you," I refer to the Hutzler Brothers Company store? A. No.

Q. No? A. No.

∠Q. Did you at that time volunteer to, and did you voluntarily co-operate with the Fashion Originators Guild of America, Inc., in its purposes? A. No.

Q. At that time were you in sympathy with its purposes? A. Yes.

Mr. Bramble: I object to that and move to strike the answer.

Examiner Averill: He can say if he is or if he is not. That is sufficient.

By Mr. Haycraft.

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Q. I show you Commission's Exhibits 99-A to E, and ask you if you recall receiving that, which apparently is a form letter written on the letterhead of the Fashion Originators Guild of America under date of June 16, 1933?

Mr. Bramble: We would like to see that before he interrogates the witness on it.

(The witness examined the document.)

Examiner Averill: Mr. Witness, can you not answer that question one way or the other without having to read through the entire letter?

The Witness: Just what is the question now? Examiner Averill: Read the question.

(Question read.)

10284

A. Yes.

By Mr. Haycraft.

Q. Did Hutzler Brothers Company, Inc., sign the socalled "Declaration of Co-operation" with the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When? A. After that letter was received; I do not recall the exact date, but it was some time after June—the middle of June, 1933.

- Q. Has Hutzler Brothers store continuously since that date been co-operating with the Fashion Originators Guild of America in its—A. (Interposing) Co-operating to what extent?
 - Q. To the extent of signing declarations of co-operation.

Examiner Averill: Off the record.)
(There was a discussion off the record.)
Examiner Averill: Back on the record.

A. No.

By Mr. Raycraft.

Q. That was the only one?

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Examiner Averill: What was the only one?

Mr. Raycraft: The only declaration of co-operation signed.

A. The original declaration of co-operation we signed was the only one that that store has ever signed.

Q. To the best of your recollection—I am going back to this now—did you sign the so-called declaration of co-operation with the Fashion Originators Guild of America in the month of June and year of 1933? A. Yes.

Q. It may have been in July, but it was right about—is it before or after that? A. I mean, it was after June.

Examiner Averill; You see my point now, "after July"; when the fact is that the Guild was formed in September and "after July" would go on and on for years and years, so we are no better off than before.

Mr. Haycraft: I do not think he knows positively, and the only way we can tell is to get the original and find out.

Examiner Averill: He can say before or after the formation of the Guild.

Charles J. Hutzler-For Commission-Direct.

Mr. Albert: How can you find it out unless you ask him.

By Mr. Haycraft.

Q. Do you know when it was, the exact date that you signed this declaration of co-operation? A. My recollection is between the middle of June and the first of August.

Examiner Averill: '33?' The Witness: 1933.

By Mr. Haycraft.

10289. Q. Then, if I understand your testimony correctly, you signed no further declarations, as a store, since that time?

Mr. Albert: That is objected to as having been previously answered and made perfectly clear in the record.

Mr. Martin: It is not clear in the record. We are trying to clear it up for the benefit of the record and of the Examiner.

Examiner Averill: The question only makes it worse. The way Mr. Haycraft has it now it would only make the confusion worse. If Mr. Haycraft will listen to his question he will see that it only makes the confusion more complex. Read the question.

10290

(Question read.)

By Mr. Haycraft.

Q. —declarations with the Fashion Originators Guild of America, Inc.; is that right? A. I think I answered this question before.

Q. You did, but apparently the Examiner did not feel that it was clear enough on the record. A. No, we did not sign any other declarations.

Examiner Averill: With the Fashion Originators Guild of America?

The Witness: With the Mashion Originators Quild of America, your Honor.

Examiner Averill: That is the point.

By Mr. Haycraft.

Q. You were also an officer of the Ladies' Ready-to-Wear Guild of Baltimore; is that right? A. Yes.

Q. President? A. Yes.

Q. How long have you been president? A. Since its incorporation: before that I was chairman.

· Q. Will you state for the record the steps that you 10292 took-strike that out. Did you have enything to do with the formation of the Baltimore Guild, and by "Baltimore Guild" I refer to the Ladies Ready-to-Wear Guild of Baltimore?

> Mr. Albert: May I ask, if your Honor please, that Mr. Haycraft differentiate between the corporation: and the association?

> Mr. Haycraft: I have not talked about any association so far.

Mr. Albert: The Ladies' Ready-to-Wear Guild of Baltimore, Inc., was recently incorporated, and he might have had something to do with the incorporation of that which was separate and distinct from the organization which existed prior to it, but we would like to know which one you are referring to.

Mr. Haycraft ? I was asking him about the Guild.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record. The question must be made clear so the witness may know whether the question refers to his activities as chairman of the unincorporated guild, or whether it refers to his activities as president of the incorporated guild, and the evidence in the record already shows when the incorporation took place.

Mr. Albert: If your Honor please, at this time may I most respectfully ask your Honor to direct Mr. Haycraft to say "association" in his question if he refers to the "association" and "incorporation" if he refers to the corporation and thereby separate the two?

Examiner Averill: I am not going to tell coursel what his questions should be. I am only making suggestions because I do not think it is fair to insist upon certain things being asked by counsel, my own interest being to see that the record is clear in this regard.

Mr. Albert: If your Honor please, then, if your Honor thinks I am unreasonable in asking for a severance or separation I will not press it

Examiner Averill: I think it is absolutely essential if you are going to understand the record. I agree fully with you in that regard. Nevertheless, I did not propose to be put in the position of directing counsel's question.

Mr. Haycraft: The "Inc." is not on the end of that question. It is not included in the question, I think, at all.

Examiner Averill: I will let it go that way, but I do want to say on the record that except for this conversation that took place off the record the witness would not know what counsel is talking about, and it leaves the record as before.

Mr. Haycraft: I will take that chance.

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By Mr. Mayoraft.

- Q. Answer the question. A. What is the question?
- Q. (Question read.) A. Yes.
- Q. Yes? A. Yes.
- Q. What did you have to do with it? A. I was chairman of the meetings at which it was discussed. As representative of Hutzler Brothers Company I approved its formation.
- Q. Did you originate the idea of the organization of the first and original Baltimore Guild, or did the idea come from someone else? A. I do not think I can give a direct answer to that. I would have to go into it a little in detail. We had a group as early as 1932 in Baltimore that met informally from time to time and discussed joint problems. So that we had this nucleus of stores at the time that we all signed declarations of co-operation with the Fashion Originators Guild of America, Inc. At that time we had learned that in New York, and I think, I am not sure of this, but I think in Chicago some of the retailers had signed agreements with the Fashion Originators Guild jointly. We probably discussed with them, individually—
- Q. By "them," will you be a little more definite? A. In fact, Mr. Golby of the Fashion Originators Guild of America, Inc., came to Baltimore on one occasion and discussed the thing with us, and I think the result of that whole conversation or discussion was the formation of the Ladies' Ready-to-Wear Guild of Baltimore.

10299

By Mr. Martin.

- Q. That is, 'the first and original Ladies' Ready-to-Wear Guild of Baltimore?
 - Mr. Albert: Oh, I thought that was so perfectly clear that no reference was necessary to it. Apparently, now, it is not even clear to Commission's counsel.

Mr. Martin: I was afraid that Mr. Albert was dumb enough not to know, so I am making it so clear that anybody in the world could know.

Mr. Albert: Oh, oh! I was not the one who was asking any question about that. I asked no question about that at all, Mr. Martin.

Examiner Averill: Gentlemen, we will do without personalities, if you please.

By Mr. Haycraft.

Q. Now, did you sign the agreement between the Baltimore Guild, as chairman—between the Fashion Originators Guild and the Baltimore Guild, as chairman of the Baltimore Guild, Commission's Exhibits 843-A to F in this case?

Mr. Albert: Is Mr. Martin trying to impeach his own agreement in evidence? This is simply delay. I am getting sick and tired with all this waste of time, if your Honor please, with nothing being elicited. It is taking ten questions to get something out which we could get if we only had one question. After all, if your Honor please, we are down here from New York and it is costing us a lot of money to stay here. I do not think that we should be subjected to this unnecessary and worthless waste of time with questions of this character.

Examiner Averilla Well, now, let us be quiet a moment and I think we will get along a lot faster. He can look at it and say whether he signed it or not.

(The witness examined the document.)

(The Witness: Yes, sir.

Mr. Haycraft: What is the answer?

The Witness: Yes.

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· O San Andrews Andrews

Mr. Bramble: What is the date of that? Is ti. the first one?

· The Witness: Yes.

By Mr. Haycraft.

Q. Did you draw up this agreement, or was it presented to you by Mr. Golby?

Mr. Albert: I object to the form of the question, and also on the ground, also, that bo's of these questions are immaterial.

Examiner Averill: Objection overruled.

Mr. Bramble: Exception. I am not objecting in the first in cance, your Honor, because when an objection is made it is made for both.

The Witness: Mr. Golby gave us copies of the contracts that the Fashion Originators Guild of America had already signed up with the Uptown Retail Guild of New York, and I think the Michigan Avenue Guild of Chicago as a guide. We may have taken certain clauses from those contracts verbatim and added others of our own suggestion.

By Mr. Hayoraft.

Q. Do you have any personal recollection of the clauses that you added at your suggestion to this original agreement?

Mr. Albert: That is objected to as immaterial.

Mr. Feldman: The agreement speaks for itself.

Examiner Averill: The objection is overruled.

He has a right, I think, to go into the formation of the agreement.

The Witness: That is a hard question to answer definitely. I think there were one or two things that we may have objected to and changed.

10304

By Mr. Haycraft.

Q. Do you have any present recollection of what they were? A. Well, there is one thing that I remember something about. I think that, in the rules and regulations of the Fashion Originators Guild of America, I think the rule against selling "apartment shops." We modified that rule so that, as far as the Baltimore Ladies' Ready-to-Wear Guild was concerned, they could sell "apartment house" shops in Baltimore under certain conditions.

Q. Now, after—strike that out. This first agreement, that is, Commission's Exhibits 843-A to F, expired, by its terms, on December 31, 1934. During that period of time did the Baltimore Guild co-operate with the Fashion Originators Guild of America in carrying out the agreement, Commission's Exhibits 843-A to F? A. Yes.

Q. Now, subsequent to December, 1934, and until September 30, 1935, the date that the record in this case shows that the present Baltimore Guild, that is, the Ladies Ready-to-Wear Guild of Baltimore, was formed, what was the relationship between the Baltimore Guild and the Fashion Originators Guild of America with respect to the subject-matter of the agreement that existed prior to December, 1934? A. We really overlooked the fact that the contract had expired. So until we were apprised of that, and I think for some time during the course of the year, I think probably in July or June, we were under the impression that the contract was still in force.

Q. And carried on? You had been carrying on? A. Well, yes.

By Examiner Averill.

Q. In other words, you just continued to do exactly as you had done? A. Yes.

Q. When you thought the agreement was in effect? A. Yes.

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- Q. Or the contract, rather, was in effect? A. Yes.
- Q. In Baltimore? A. Yes.
- Q. During this interval, that was the way you transacted your business as you did transact it; in other words, during this interval you transacted your business as you had transacted it prior to that time— A. Yes.
 - Q. -is that correct? A. It is, Judge.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. According to the terms of the agreement entered into on September 30, 1935—strike that out—I am not quite ready for that, yet. What, if anything, did you have to do with the formation of the present Ladies' Ready-to-Wear Guild of Baltimore, Inc., as organized as of September 30, 1935? A. I thought that the answer I made to the previous question as to the formation of the Ladies' Ready-to-Wear Guild of Baltimore answered that; that the same answer, and I now think that the same answer would apply to this question perfectly.

Q. Possibly. Can you just testify as to want the change was, or, first, why the change in the form of the granization was made?

Mr. Albert: That is objected to as incompetent, immaterial and irrelevant, and, in all events, certainly not binding on the Fashion Originators Guild of America.

Examiner Averill: That may be all very true, but, nevertheless, there are other respondents in this case besides the Fashion Originators Guild of America. The objection is overruled. The witness may answer the question.

Mr. Bramble: Exception.
Mr. Albert: Exception.

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By Mr. Haycraft.

Q. If you will just answer the question, please.

The Witness: What is the question?

Examiner Averill: Read it.

(Question read.)

The Witness: Up to the time of the incorporation we were a membership organization composed of dealers in ready-to-wear located in Baltimore City.

We had no dues, and practically no expenses. The minimum of expenses that we did have was paid by the Retail Merchants Association of Baltimore who were good enough to allow us the use of their offices.

At the time of the incorporation we found that we might have expenses and that since a number of our membership were not members of the Retail Merchants Association of Baltimore that the organization should be incorporated under—so it would be a separate and distinct organization.

By Mr. Haycraft.

Q. Did the Fashion Originators Guild of Baltimore, or any officers of the Fashion Originators Guild-

Examiner Averill: Of Baltimore? Mr. Haycraft: Question withdrawn.

By Mr. Haycraft.

- Q. Did the Fashion Originators Guild of America, or any officers of the Fashion Originators Guild of America, make any suggestions to you with respect to the advisability of incorporating? A. No.
- Q. What was the increased expense that you anticipated? A. So far the dues that have been collected have,

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primarily, been used to answer the charge of the Federal Trade Commission.

· Q. Was that what you anticipated when you incorporated? A. No. As a matter of fact, we had agreed with the-

> Mr. Albert (interposing): If it please the Court, may I interpose an objection here in the light of the witness' answer that the expenses that had to be met so far have been only the defense of the Federal Trade Commission's complaint that it certainly is immaterial as to what expenses were anticipated if they did not actually arise.

Mr. Haycraft: I do not think the objection needs 10316' a reply.

Examiner Averill: Overruled. We will save time by going ahead.

Mr. Albert: Probably so. We have wasted enough time already.

The Witness: What is the question?

Examiner Averill: Read it.

(Question read.)

The Witness: We had agreed with the Fashion Originators Guild of America that we would like to have a shopper in Baltimore.

The Fashion Originators Guild of America, through one of your exhibits that is already in the record, had sent out a letter to the retailers 10317 throughout the ountry, asking for subscriptions. None of the Baltimore stores was willing to give a retall subscription either directly or through the Ladies' Ready to-Wear Guild of Baltimore. did, however, feel that we should help defray at least some of the expenses of a shopper in Baltimore because we heartily approved of the idea and felt we were deriving some benefit, the same bene-

fit as the Fashion Originators Guild of America, so that by raising funds we hoped to meet some of the expenses of that shopper.

And, I think, as Mr. Roycroft testified yesterday, or the day before, we did make one payment to the Fashion Originators Guild of America as a contribution towards the cost of the shopper's salary which was paid directly by the Fashion Originators Guild of America.

By Mr. Haycraft.

- Q. That was made before December, 1935, or since December, 1935? A. I cannot tell you the exact time it began, I cannot tell you the exact time the payment was made, Mr. Haycraft, but I think, however, it was made around the first of January, 1936, possibly before and possibly shortly after.
 - . Q. What dues did you have at the beginning of the incorporation, or subsequently thereto what dues did you levy on the members of the Baltimore Guild?

Mr. Bramble: We object to that because we do not see what they have to do with the issues here, what dues they levied on their own members.

Mr. Haycraft: Well, let it go. It is already in evidence, I guess, one way or another, anyhow.

Examiner Averill: Do you withdraw the question?

Mr. Haycraft: -Yes. The Witness: It is in.

By Mr. Haycraft.

- Q. This shopper that you referred to, you say she benefited you as much as the Fashion Originators Guild of . America; by "you" do you mean the local Guild? A. Yes.
- Q. Has that shopper continued to function in Baltimore since January, 1936? A. She is still functioning.

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- Q. But the Baltimore Guild, as an organization, is not contributing to her expenses? A. No.
 - Q. No? A. No.
- Q. And the individual retailers in Baltimore are not contributing; is that correct? A. No, not to myoknowledge.
- Q. Your store is not doing so in any event, itself? A. No.
- Q. According to the record, the agreement entered into between the Baltimore Guild, Inc., and the Fashion Originators Guild of America on September 30, 1935, expired December 31, 1935, and has not been renewed? A. Well.

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- Q. What has been the relationship between the Baltimore Guild, Inc., and the Fashion Originators Guild of America since that time; that is, since December 31, 1935, with respect to the subject-matter in the last agreement? A. There has been no reason for us to require anything of the Fashion Originators Guild of America, Inc., through our contract, our former contract, which has expired since that time.
 - Q. Will you explain what you mean by that?

Mr. Albert: May I have the answer read, I did not hear it.

Examiner Averill: Read the answer. (Answer read.)

By Mr. Haycraft.

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Q. Will you explain what you mean by "no reason"?

A. Well, in our own rules, regulations, by laws, and so forth, we can function without any help from the Fashion. Originators Guild of America. Our contract with them simply agreed to do certain things that we have agreed to do among ourselves, so we have not had any difficulty before or since on account of the contract expiring.

Q. Do you know whether or not, as a matter of fact, you kept the Fashion Originators Guild of America informed as to the status of your membership? A. I cannot say. Mr. Roycroft could have answered that question, but I cannot.

Q. Have you changed in any way the rules and regulations that were in existence at the time of the expiration of the contract with the Fashion Originators Guild of America? A. We always make changes; seasonal changes, in our, or in certain of our agreements, but of a minor nature.

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Q. If you carried—strike that out. If you know, has a store, regardless of the Baltimore Guild, and I refer to your own store now, continued to co-operate with the Fashion Originators Guild of America in its campaign against piracy, style piracy, and as indicated in the so-called "Declaration of Co-operation" that you signed in January, 1933?

Mr. Bramble: I object to that as obviously entirely outside of the issues in this case, incompetent, immaterial, and irrelevant.

Examiner Averill: Overruled. If the witness knows, he may answer. If he does not, he can say so.

The Witness: We have been using the warranty stamp on our orders, and have been returning copies when they have been adjudged copies.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

By Mr. Hayeraft.

Q. Will you explain, please, for the record, just what you mean by "returning copies," and how they are adjudged copies? You said, "I think, when they are adjudged copies." A. Yes.

Q. Will you explain just what takes place, and how you do it? A. When we place orders with non-Guild manufacturers we reserve the right, through this warranty clause, to return them should they be copies of original designs from manufactures who are members of the Fashion Originators Guild of America. merchandise comes into our stock we may have, or we may find that we have an original dress, if it is a copy, in our stock, or we may find that another retail store will notify us that we have a copy.

By Examiner Averill.

Q. Just one moment. A. Yes, sir.

10328 Q. You mean they notify you that the garment that

you are displaying is a copy? A. I should qualify that. Q. Yes. A. I would like to qualify that because they

do not notify us directly.

Q. Whom do they notify? A. They notify the Ladies' Ready-to-Wear Guild office through Mr. Roycroft, and also we may be notified by the shopper, from her original If the particular dress involved has been proved a copy, or has been adjudged a copy, we will return that to the manufacturer.

CHARLES J. HUTZLER was thereupon recalled as a witness for the Commission, and having been previously sworn, testified further as follows:

Cross-examination by Mr. Albert.

Q. Mr. Hutzler, how often as you go to New York? A. Frequently.

Q. In the course of your business you are continually, traveling at various intervals between Baltimore and New York? A. Yes.

10330.

Charles J. Hutzler—For Commission—Cross.. Herbert L. Bergdahl—For Commission—Direct.

Mr. Albert: That is all.

Mr. Bramble: No questions, your Honor.

Examiner Averill: Any redirect? I do not suppose there is, Mr. Haycraft.

Mr. Haycraft: Nothing further.

Room 901, 45 Broadway. New York, New York, November 17, 1936.

10331

Met, pursuant to adjournment, 10 o'clock A. M.

Before: EDWARD M. AVERILL, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER Esq. (1450 Broadway, New York, New York), appearing for the Fashion Originators Guild of America.

STANLEY KAUFMAN, Esq. (GOLDWATER & FLYNN, 60 East Forty-second Street, New York, N. Y.), appearing for Textile Affiliates.

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HERBERT L. BERGDAHL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. State your full name, please, Mr. Bergdahl. A. Herbert L. Dergdahl.

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- Q. Your residence? A. New Rochelle, New York.
- Q. Your occupation? A. General merchandising manager of the Associated Merchandising Corporation, New York office.
- Q. Will you describe for the record what the Associated Merchandising Corporation is? A. Well, it is a New York office of a group of twenty stores located in various cities of the United States. These twenty stores own this office. Does that answer your question?
- Q. What function does the office perform, generally speaking? A. Well, the office performs various functions of services in this market for its member stores. Among other things, the office gathers information in the market for the buyers in the stores. They handle so-called open orders in the market for the member stores at their request, when such orders are received from the stores, and they gather style information for the respective stores.

Examiner Averill: Are these stores that you speak of, retail, wholesale or what?

The Witness: They are retail stores, retail department stores.

Examiner Averill : Thank you.

By Mr. Haycraft.

Q. Probably fight now it would be a good idea to get this in evidence. Mr. Bergdahl, this is a list of the stores (indicating paper)?

> (A paper was thereupon marked for identification Commission's Exhibit 860.)

By Mr. Haycraft.

Q. I ask you if you can identify this Commission's Exhibit 860 for Identification, as a list of the members of

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Herbert L. Bergdahl-For Commission-Direct.

the Associated Merchandising Corporation—that is, the member stores that you referred to? A. I can.

Mr. Haycraft: I offer it in evidence.

Mr. Weisman: May I see it?

Examiner Averill: Let him see it.

(Mr. Haycraft hands paper to Mr. Weisman.)

By Mr. Haycraft.

Q. As of what date is that list? A. Well, that is as of —I think that was prepared as of July of this year. That list also contains the stores that we service in other countries, in Europe and Australia and Canada.

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Examiner Averill: Are you offering that?

Mr. Haycraft: Yes.

Examiner Averill: Any objection?

Mr. Weisman: No.

Examiner Averill: Gentlemen, the paper in question, which purports to represent a list of the members of the Associated Merchandising Corporation, will be received in evidence and marked Commission's Exhibit 860.

(The paper heretofore marked for identification Commission's Exhibit 860 was marked as an exhibit and received in evidence.)

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The Witness: May I state that the foreign stores are merely serviced out of our office, and are not owners—are not part owners in the office steelf.

By Mr. Haycraft.

Q. Then I will ask you to name those stores, which stores you mean. A: Those stores that we served for export purposes are Harreds, Ltd., of London; Selfridge & Company; Ltd., of London; The Myer Emporium, Ltd., of

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Melbourne and Adelaide Australia; Farmer & Company, Ltd., of Sydney, Australia, and the Hudson's Bay Comoany retail stores of Canada.

Q. How long have you occupied the present position that you have testified to? A. For about five years.

- Q. Before that, what did you do? A. Before that I was primarily ready-to-wear merchandise manager, garments, all ladies' apparel.
- Q. Where? A. In the same office, the A.M.O., since from 1929 until about 1931 or 1932, at which time I took on additional duties in the office.
- Q. Since 1929 you have been in the office of the A.M.C.? A. No, I have been in the office before that; I have been 10340 in the office since 1922.
- Q. In 1922. In what capacity from 1922 to 1929? A. Well, I started in the office in one of the very lowest positions, and was moved up from time to time, from assistant buyer to buyer, to basement manager of the office, and then ready-to-wear manager of the upstairs garment departments, garment and accessory departments, after which I took on general duties, merchandising the whole buying—all the buying activities in the office.
 - Q. Do you have a superior officer? A. Yes.
- Q. Who is he? A. Phillip J. Reilly, Col. Phillip J. Reilly
- Q. What position does he occupy? A. He is the director of the Associated Merchandising Corporation and the Retail Research Association.
- Q. About how many employees are employed? A. Approximately 250, more or less.
- Q. In a general/way, what functions do these employees perform? A. The general function of the whole office is to serve the stores in this market, that is, with the exception of the retail research division.
- Q. What is the retail research division? A. That is a division which corresponds in the store to the non-mer-

chandising departments, the non-selling departments, such as the superintendent's division, the comptroller's division, the advertising and publicity divisions—those activities are centered in what is called here as the Retail Research Association.

- Q. How is the work divided—that is, how many employees do you have in the retail research division, and how many in the A.M.C. proper? A. Well, I have not counted them, but I think that they would roughly be about three to one.
- Q. That is, three to— A. Three times more employees in the merchandising end of the work than in the research activities—maybe it is four to one, I would not know.
- Q. During the time that you have been with the Associated Merchandising Corporation, which I think we would better call the A.M.C., in the interest of brevity—have you had occasion to call upon or meet manufacturers of ladies' ready-to-wear garments in the New York area? A. Yes, I have.
- Q. To what extent have you familiarized yourself with the business of manufacturing—

Mr. Weisman: I object.

By Mr. Hayeraft.

Q. -- and selling of ladies' ready-to-wear garments?

Examiner Averill: The witness may answer that question—to what extent you have familiarized yourself.

A. Well, during the first several years, say up until 1929, I was very active as a buyer in the organization, buyer of various types of merchandise, primarily coats and dresses, and, in some cases, sportswear. I was also active as manager of the basement—

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Examiner Averill: Wait a moment. Who were you buying from manufacturers or wholesalers?

The Witness: Buying from the manufacturers in New York City for the—

Examiner Averill: I do not mean the names of them, I just want to know the class.

The Witness: From the manufacturers in New York City. Subsequently, as basement manager, I came in contact with the manufacturers and their problems as a manufacturer would, and afterwards as a manager of the ready-to-wear division I came in contact with the manufacturers who made merchandise for us, and from whom we purchased as an executive would, and discussed the problems that pertained to them, and to us, in connection with the merchandise that was made for us as well as other problems that might be vital to the industry.

'Mr. Weisman: May it please your Honor, I respectfully move that the answer be stricken out as not responsive to the question.

Examiner Averill: Well, I cannot agree with the gentleman fully there.

Mr. Weisman: May I have an exception?

Examiner Averill: Yes, sir.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. Since that time—you covered in your answer up to 1929, I believe, did you not, the time you were a buyer? A. Yes—well, yes, up to the time that my duties were enlarged. Now, in the last four or five years, of course, my activities have been spread over more divisions in the organization, and my duties have been to watch the policies of the organization and see that the general—as a general rule, the stores were getting the service that they wanted

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out of this market, and then, in that time, my activities, if anyhing, have been more in the nature of an executive than they were previously.

- Q. When you refer to having goods manufactured for you, just what did you have in mind? A. Well, goods manufactured for our stores as against orders we placed in the market.
- Q. I see. What is the custom in that respect? Will you describe that? A. In connection with the stores—in connection with the orders that are placed by store buyers themselves, we give them the information that we may have as to commenting on the market, and giving them the benefit of any advice we may have, or any facts we have found regarding the market, and they use their own judgment.

Examiner Averill: Who placed the orders with the manufacturers?

The Witness: The buyers. I said in connection with the orders the buyers placed. I prefaced my statement with that.

Examiner Averill: All right; all right.

The Witness; Yes.

Examiner Averill: The buyers placed the orders? The Witness: Yes.

Examiner Averill: That is, the individual members placed the orders?

The Witness: Yes. I said there were two kinds, there were orders the buyers placed from the stores, see?

Examiner Averill: Yes.

The Witness: When they come to town they place their own orders. There are also occasions when we place orders for them when they are not here, you understand?

Examiner Averill: Yes.

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Herbert L. Bergdahl-For Commission-Direct.

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The Witness: Now, in both instances we assist . them. In one case we merely give them the information that they may want, and they act on their own judgment after that.

In the second case, when we do all the buying, or when we do the buying of the orders, and have all to do with the placing of the order, we use our own judgment. Of course, in accordance with instructions that we get from the stores.

After the orders are placed, either by the store buyer or the office, we follow those orders to see that they are carried out the way the manufacturer has agreed to do, understand. We have service organizations that follow the orders to see that they are delivered on time, and as nearly as possible in accordance with the agreement or understanding that is stated or stipulated on the order.

Does that explain the

By Mr. Haycraft.

Q. Are there other buying organizations similar to yours in the New York market?

Mr. Weisman: I object to that as immaterial, not within the scope of this proceeding.

Examiner Averill: The objection is overruled.

Mr. Weisman: Exception.

Examiner Averill: I take it that is in connection with trying to establish some custom in the industry. You may answer that question:

A, I would say that there are; yes, sir.

By Mr. Haycraft.

Q. To your knowledge, do they perform the same or similar functions with the retail dealers that they repre-

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sent out in the country? A. For all practical purposes, it is the same; yes, sir.

Q. I show you Commission's Exhibit 92, and ask you if you can recognize the names listed thereon as being organizations somewhat similar to yours, or if they are exactly similar, say so? A. Well, the Cavendish Trading Corporation is very similar to ours, I think. The Specialty Stores Office is very similar to ours. Now, by that I mean that they are similar in management and ownership—that is, that the stores own and control the offices, and regulate the service that they want out of that office, and then there are other offices, such as offices where the office is owned by a corporation that not only owns the office but the stores as well. That is a little different, but the work done in the office is the same. Would you also—

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Q. Yes. A. Do you mean that I should also tell you-

Q. Yes; also indicate those, if you recognize any of those offices? A. Did you also mean that I should indicate those other types of offices, as far as I am familiar with them?

Q. Yes.

Mr. Weisman: May I know what the witness is referring to?

Mr. Haycraft: Commission's Exhibit 92.

Examiner Averill: Commission's Exhibit 92. He is picking out certain names on that list, sir, as I understand it, which come within these different, I might say, classifications, that he is telling us about.

Mr. Haycraft: Resident buying offices.

Examiner Averill: That means New York.

Mr. Haycraft: Yes.

A. Fashion Originators Guild supplying resident offices signed by the Guild, there is the centrally owned offices and stores such as the Allied, the May Company, the Associated Dry Goods. There is one more, but I do not see it on here, so I won't mention it—oh, yes, the William T. Knott Company.

Now, then, there is another group, that in which the office is owned by private individuals, in New York City, who rendered a service for the stores. They render this service to any extent that the store wishes—that the respective store wishes to pay for it, and then they have various fees that they charge based on the service that they render the store.

Now, such an office would be—such offices would be Frohman & Altman, Jack Harthlay, Kirby, Block & Fischer, Felix Lilienthal, McGreevey, Werring & Howell, Mutual Buying Syndicate, Joseph K. Rosenberg, Amelia Rosenau.

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Those are about all that I would care to mention.

Examiner Averill: Let me see those.

Mr. Haycraft: •I wish to make a correction of the statement I made for the record a moment ago. The witness is reading from Exhibits 93-A and B.

Mr. Weisman: I did not hear you.

Mr. Haycraft: 93-A and B.

Mr. Weisman; I thought he said Exhibit 92.

Mr. Haycraft: I did say so.

Examiner Averill: He did say so, but he said he wanted to correct it.

The Witness: Perhaps I should add something to what I have said.

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Examiner Averill: One moment before you add anything, now, sir.

The Witness: There is also another type of office called the commission type of buying office, that renders somewhat practically the same service to its clients, but the service is paid for by the manufacturer. I do not know whether there are any

names on there or not, because I am not so familiar with them, but there are a good many of those offices in the city who render a very similar service to ours, to that type of service we give our customer, but the manufacturer pays that office for rendering that service to the stores who are members of that office.

By Mr. Haycraft.

- Q. Have you testified to the firms with which you are familiar on this exhibit? A. Yes, sir; I have.
- Q. Is there such an organization in New York as Associated Buying Offices? A. Yes, sir.
- Q. Of what does that consist; what is it? A. The Association of Buying Offices consists, in round numbers, I think, of approximately resident buying offices, who have grouped together to study and consider the problems that confront them, that would require discussion. I think they were formulated as a group under the N.R.A. to study the problems that came up at that time, and to consider whether or not they should formulate a code for the resident office industry.
- Q. Have you had anything to do with the Associated Buying Offices organization? A. Well, the A.M.C. is not officially a member of the A.B.O., but we have worked with them, and I have in some cases acted as the chairman on their committees, and have been on their committees, merely in co-operating with them on work that they do, and problems that they consider.
- Q. From this experience that you have had with your organization, the A.M.C., and your contact with other buying offices, I will ask you whether or not you are familiar with the problems of the retail dealers, merchants and ladies' ready-to-wear?
 - Mr. Weisman: Will you direct—well, just a moment—I think the Court will take judicial notice

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that a retail dealer and any other business man has multifarious problems; it has not yet been directed to one problem. Would your Honor direct that this question be limited to a specific problem? Obviously, the witness is not going to give us any dissertation on all the problems that confront the retail dealer. Is it a problem in selling, is it a problem in credit, is it a problem in mark-downs, in percentages, in mark-ups? I would like to have it more specific.

Examiner Averill: Off the record. (There was a discussion off the record.) Examiner Averill: On the record.

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By Mr. Haycraft.

Q. In giving your answer, Mr. Bergdahl, of course, I refer to those problems that would have to do with the purchase of merchandise, and, to a limited extent, I suppose, to the sale of merchandise—merchandising problems.

Mr. Weisman: I object to that as incompetent, improper, immaterial, no proper foundation laid; obviously the witness from his present testimony has not yet shown a sufficient familiarity to testify with any degree of probative force.

Examiner Averill: The question as it stands now is simply a preliminary question as to whether he is familiar with the type of activities of the retail merchant which have been described.

Now, he may answer that question "yes" or "no," then we will see what further develops.

If you will kindly tell us "yes" or "no," please, Mr. Bergdahl

The Witness: I think I am familiar with the problems pertaining to the purchasing or selling of ladies' apparel.

Examiner Averill: By the retailer?

The Witness: By the retailer, yes.

Examiner Averill: Have you answered it?

The Witness: Yes.

By Mrr Haycraft.

Q. Now, Mr. Bergdahl, are you familiar with the Fashion Originators Guild of America, Inc.? A. Well, I am familiar with it from the point of view of the contacts that the A.M.C. office had with the Fashion Originators Guild, as well as many of the contacts that our individual stores had with the F.O.G.A., and also the contacts that the Associated Buying Offices had with the F.O.G.A., since—for a great part of the time I have acted as chairman of the committee that conferred with the F.O.G.A. on the problems pertaining to the F.O.G.A. issues.

Q. When was your first contact with the F.O.G.A.? A. In the early spring of 1932.

- Q. What was the occasion? A. The occasion was a luncheon at the Garment Center Club, called, I think, by Mr. Rentner and several of his—
- Q. Maurice Rentner? A. Maurice Rentner, yes, and several of his associates, I believe such, as I recall it, I think that such people as Mr. Bass, Mr. Sondheim, Mr. Florsheimer, and——
- Q. In giving those names, will you give the names of the firms that they represent? A. Well——
- Q. As far as you can. A. This is according to my recollection, because I am not positive that they were present, but I know that Mr. Maurice Rentner was there, of Maurice Rentner, Inc.; William Bass, I am quite sure, of William Bass & Company, Inc.; Herbert Sondheim of Herbert Sondheim, Inc., I think at that time it went under a different name, Sondheim-Levy—I am not sure of that, also—and others. There were about fifteen, or approximately twenty people there, mostly manufacturers, but a few retailers. If my memory serves me correctly, I think John B. Sweeney was also present at the time.

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- Q. Who was he? A. He was the director of the Specialty Stores Association.
- Q. That you named a few moments ago as a buying office? A. Similar to ourselves, yes.
- Q. What transpired at that luncheon? A. Well, as I recall it, Mr. Rentner exposed for our consideration, particularly for the few retailers who were present, a plan that had been considered to improve or to build up the prestige for better merchandise, particularly dresses, and that this plan was, as I see it, a nucleus for what was called the Fashion Originators Guild—that is, it was the starting, it was the beginning thoughts of the Fashion Originators Guild. There was nothing definite about the plan that had been laid down, or, at least, it was not exposed to us as a perfected plan by any means.

Q. What was the plan that he suggested at that time? A. Well, he merely stated that they were considering—that this organization had been or was going to be formed, to further the interest of retailers and the public in better merchandise, and that as such they probably would develop a label and attach it to the merchandise, and advertise to the public regarding this organization, and its purposes and standards and so forth.

Q. Was there anything said at that time with respect to the co-operation that was expected from the retail dealers in this plan? A. No, they did ask, however, if we liked the idea, if we thought well of it. That was the purpose of having the two or three or more retailers present, who were there.

- Q. Was there anything said at that time as to the nature of the plan, with respect to the co-operation from textile manufacturers of the plan? A. I do not recall if there was any such plan, or such discussion, rather.
- Q. Was there anything said on that occasion with respect to red carding of retail dealers who did not co-

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operate with the plan? A. No, I do not believe that that had been conceived up to that time.

Q. Well, did anything go on in that first meeting that you referred to, as far as you are concerned, any further contact? A. Well, as I say, they asked us how the retailers—they asked us how the retailers of the country would react, from our knowledge of the industry, to such a plan. We told them we thought that they would react favorably to such a plan as presented to us at that time, and I think they organized and gathered members, or influenced manufacturers to become members of this association, and began to formulate plans for putting it into action. We did not hear very much about it after that for a period of several months.

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- Q. When did you next hear of it, or learn of its activities? A. Well, in the late fall of 1932.
- Q. What occurred then? A. Well, at that time the Guild had conceived a plan, I believe, if they could get local retail guilds who would—

Examiner Averill: One moment. When you say the "Guild"——

The Witness: The Fashion Originators Guild of America, New York City.

Examiner Averill: Oh.

The Witness: Had conceived a plan that if they could set up local retail guilds all over the country, the United States—

Mr. Weisman: Just a moment—Mr. Bergdahl is testifying now as to what happened in the fall of 1932.

Examiner Averill: Yes.

The Witness: Beginning in the fall of the year, I began to have numerous contacts—

Examiner Averill: Oh.

The Witness: —with officials of the F.O.G.A.—Examiner Averill: Yes.

The Witness: —and discussions with retailers from other cities, and in these conversations with the executives of the Guild—

By Mr. Hageraft. .

Q. Will you name them as you go along? A. What is that?

Q. Will you name them as you go along so we can be clear. A. Well, there were Mr. Maurice Rentner and Mr. Golby, and members of the board of governors, I believe they are, and primarily, however, with Mr. Rentner and Mr. Golby and Mr. Kalman.

Examiner Averill: Kolman?

The Witness: K-a-l-m-a-n.

Mr. Haycraft: Kalman, K-a-l-m-a-n; he is with the firm of—

Mr. Weisman: Now-

Mr. Haycraft: —it has gotten away from me, there is a firm there.

By Mr. Hayeraft.

Q. With what firm is he? A. Well, I will find out and tell you at a later time.

Mr. Weisman: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

The Witness: Then in the course of these conversations I was told that it was the conclusion of the Guild that it would be—that this plan that they had conceived would be best put over through what they call local city guilds, in the various cities of the United States.

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By Mr. Haycraft.

Q. Did they tell you anything else with respect to the plan which they were then— A. Well, they wrote to retailers, I believe, rather profusely, and discussed their plan, and some of which we have copies of, I think. I believe that Mr. Rentner sent out a general letter dated in December, probably the middle of December, stating the plan, discussed local guilds, so-called local guilds, in general, urging the retailers to formulate such guilds, or discussing with them how it might be done.

(A paper was thereupon marked for identification Commission's Exhibits 861-A and 861-B.)

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By Mr. Haycraft.

- Q. I show you Commission's Exhibits 861-A and B for Identification, and ask you if you can identify that? A. Yes, this is a letter dated December 6, which was sent by Mr. Rentner to B. Forman, of Forman, Company, Rochester, which was turned over to me by Mr. Forman after he had received it.
- Q. Is that store a member of the A. M. C.? A. That store is a member of the A.M.C.

Mr. Feldman: What is the date of that letter?

Mr. Haycraft: December 6.

Mr. Martin: December 6, what year?

The Witness: 1932.

Mr. Haycraft: 1932.

Examiner Averill: Are you offering that?

.Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. It refers to F.O.G.A. matter? A. Yes, it refers to F.O.G.A. matter.

(Thereupon a short recess was taken.)

Mr. Haycraft: I offer the paper in evidence.

Examiner Averill: Any objection?

Mr. Weisman: No.

Examiner Averill: Gentlemen, the paper in question, which purports to be a letter bearing date December 6, 1932, addressed to B. Forman, B. Forman & Company, Rochester, N. Y., and signed by Maurice Rentner, will be received in evidence and marked Commission's Exhibits 861-A and 861-B, the same consisting of two sheets.

(The letter heretofore marked for identification Commission's Exhibits 861-A and 861-B, was 10382 marked as an exhibit and received in evidence.)

Q. You said a moment ago before recess that the Guild sent out letters to retail dealers describing the plan. Now, I am asking you whether or not any action was taken by the A.M.C. with respect to that plan, or any deliberations held with respect to it? A. Well, the store owners, the store principals exchanged information in some cases as regards what was the best thing to do in connection with the rian proposed by Mr. Rentner.

Q. Was there any objection raised to the plan at that time by the stores, merchandise stores of A.M.C.?-

> Mr. Weisman: I object to that unless Mr. Haycraft means by his question whether an objection was raised to the Guild or to Mr. Rentner; for example, if these men met among themselves and some had objections and some did not, I do not-

First, let us see whether Examiner Averill: there were any objections. There may not have been any- Then we can find out later whether the objections were communicated. It will not take but a moment to do that. Go ahead, please, answer the question, if there were any objections.

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A. There were—I would not like to call them objections—there was a statement of the problem involved in connection with going along with the Guild.

By Mr. Haycraft.

Q. What was the problem that was involved?

Mr. Weisman: I object to that as immaterial. Examiner Averill: I will have to hear it before I can tell you whether it is immaterial or not, gentlemen. For the moment I will overrule the objection, subject to motion to strike if it does not

appear that it is material.

The Witness: Well, may I answer it?

Examiner Averill: Yes. Exception noted for counsel, please.

A. In connection with this plan which involved formulating some contact with the Guild similar to that which the Guild had with the New York—the Uptown Retail Guild, I believe—there was discussion as to whether or not stores throughout the country, and particularly our stores, could co-operate, if they did agree to such a plan, and among themselves they brought up the question of how they could agree to co-operate in connection with the copied merchandise in the lower price lines, and that problem of the lower price lines was brought to the attention of Col. Reilly, and to my attention, in conection with our office work in the A.M.C., and also for purposes of conveying that problem to the officials of the Guild.

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By Mr. Haycraft.

Q. Did you do so? A. I did.

Mr. Weisman: When?

Mr. Haycraft: I am conducting this examination.

Mr. Weisman: Well, then, I object to the question.

Examiner Averill: One moment. Let us proceed. He will probably ask him that question next, and let us see if he does; if he does not, you can bring out the date.

Mr. Weisman: Let us see if he will.

A. I did so at that time, and have ever since that time.

By Mr. Haycraft.

Q. Now, will you explain— A. (Resumed) Continuously and constantly, and always.

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Q. Now, Mr. Bergdahl, will you explain just what the problem is, and how it is a problem—

Mr. Weisman (interposing): I object-

By Mr. Haycraft.

Q. —to the retail dealers with whom you come in contact?

Mr. Weisman: —to that as incompetent, immaterial, not within the issues of this case, and that this witness is not properly qualified, and I further ask that the prior answers which were taken subject to my motion to strike out, now be stricken.

Examiner Averill: Gentlemen, the motion to strike is denied, and the objection is overruled; exception noted for counsel. Read the last question.

(Last question read.)

A. Well, the store principals of our group felt that while it might be advisable to give co-operation, and, in fact, beneficial to themselves to give co-operation, in regard to copying—the copying of merchandise—they questioned how this could be done in the lower-price lines, inasmuch

as the lower price retailers probably would not sign up with the Guild on a similar basis, and, therefore, would not be controlled by the Guild; and, as a result of their inability to control them, they could continue to carry merchandise which were copies, which the stores who would co-operate could not carry—that is, if they acted in good faith, and lived up to any such agreement that they might enter into with the Guild.

By Mr. Haycraft. .

- Q. What was the form of co-operation that the Guild expected the dealers to give, that you refer to? A. Well, they expected the retailers at a subsequent date to this time in December.—
- Q. Let us talk about December first. A. Well, at that time they hoped, or expected, that they could formulate these local city guilds, and that they could make agreements with the city guilds covering a basis of co-operative action, regarding the furthering of the program that they were inaugurating.
- Q. A that time what price lines did the members of the Guild manufacture? A. I was told by Mr. Rentner himself that the Guild manufactured dresses largely from \$22.50 up; in rare cases from \$16.75 up.

Mr. Weisman: Now, I submit the answer be stricken out since it appears that the witness has given a wrong answer. He says in answer to the question by your Honor "I know"; then he says "I was told." I submit that is not knowledge. Anybody in the world might have told him something. If he is asked "Did Mr. Rentner tell him?" that is one thing. Now, this witness is presupposing. He is trying to give us as his knowledge something that somebody may have truthfully or untruthfully, or correctly or incorrectly told him.

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Examiner Averill: My dear sir, if we were to go on that theory no information would ever be elicited. If the gentleman, whom he states is Mr. Rentner, and whom the evidence so far indicates was very active in forming the original plans and ideas, made a statement to this gentleman, which he gives as his authority for it—

Mr. Weisman: I have no objection to him stating on the authority of Mr.—

Examiner Averill: He cannot know everything. I do not actually know you are alive; I think you are.

Mr. Weisman: You have pretty good evidence of it, Judge.

Examiner Averill: But I do not know it.

Mr. Weisman: You have pretty good evidence of it, but he hasn't any evidence at all. Your evidence is direct. You are not relying on somebody telling you I am alive because I may have died five minutes after somebody saw me. He says that Mr. Rentner tells him something. You know I am alive because you see me and hear me talking.

The Witness: I qualified it further.

Examiner Averill: Really, I must overrule the objection. Go ahead, sir.

The Witness: What is the question? Examiner Averill: Read the question.

(Last question read.)

Mr. Weisman: May I have an exception?

Examiner Averill: Certainly, with pleasure. Read the answer.

(Answer of the witness read.)

The Witness: May I add to that, sir?

Examiner Averill: Yes, if there is anything else.

The Witness: also have a staff of buyers who know exactly what each manufacturer is making at

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the time, and that confirms the information that was given to me by Mr. Rentner.

Examiner Averill: You mean your buyers reported to you?

The Witness: They did.

By Mr. Haycraft.

Q. Was there any evidence of co-operation entered into by way of agreement or otherwise, in December, 1932, between the A.M.C., or its members, and the F.O.G.A.? A. None that I know of.

Q. Well, when you discussed this problem that you referred to with the gentlemen that you have named, what did they say with respect to it? What reaction did you get from it?

By Mr. Haycraft.

Q. With whom did you discuss it? A. Well, with the executives of the Guild, Mr. Rentner and Mr. Golby; and, as I recall it, Mr. Kalman.

Q. What did they say with respect to the problem as presented to them? A. Well, they did not say much at that time; they did not say much at that time; they listened, and, as I recall it, they thought that could be worked, but no specific solution was arrived at, since they were attempting to formulate these local guilds, and that they were going to make the agreements with those guilds, and they were going to see if they could work out their plans with the guilds respectively. I am talking now about December, or thereabouts, in that year.

Q. That is right. A. And that no specific problem arose as between our group and them at that time, since they did not enforce this thing exactly at that date.

Q. Well, then, what happened with respect to the plan of the F.O.G.A., subsequent to 1932? Was there any fur-

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ther development? A. No, I believe that the Guild was not entirely successful in formulating these local guilds, or, at least, they were not formulated fast enough to make the plan operative under that scheme.

By Mr. Haycraft.

Q. Did you discuss the F.O.G.A. with Messrs, Rentner, Golby or Kalman during the period of time subsequent to December, 1932? A. Yes, sir.

Mr. Weisman: Now, may I have that question?

By Mr. Haycraft.

Q. And during those discussions

Mr. Weisman: Just a moment, please.

A. Will you qualify that period of time?

Examiner Averill: One moment, please; one moment. What is the objection?

Mr. Weisman: The witness has the same trouble I have; he says, "Will you qualify that period of time?"

Mr. Haycraft: Subsequent to December, 1932. Examiner Averill: All right.

By Mr. Haycraft.

Q. And I will restrict it to the first six months after 10401 December, 1932. A. Well, yes. As I recall it, I did have conversation with them.

Q. During those conversations did you learn anything with respect to what the Guld was doing, the F.O.G.A. was doing? A. Naturally, I think I learned something.

Q. What did they tell you as to the subject of the Guild in establishing the local guilds that you referred to a moment ago? A. Why, they explained that it was not-the

plan was not progressing rapidly enough, and that they would have to—that they had another—they were planning another method to go about this.

- Q. Did they disclose to you what that other method was? A. They did.
- Q. What was it? A. The plan was arrived at late in the spring of 1933 to ask retailers in the country who—to ask all retailers who wished to do business with the members of the F.O.G.A., if they would not sign a declaration stating that they were for the policies of the Guild, and that they would co-operate.
- Q. I show you Commission's Exhibits 99-A to E, and ask you if you can identify that exhibit. A. I can identify it.
- Q. What do you know about it? A. Well, that was the letter that was sent out by Mr. Rentner explaining the new policy of the Guild, or at least the policy to ask retailers to sign the declaration—

Mr. Weisman (interposing): Just a moment. The Witness: —of co-operation.

By Mr. Haycraft.

- Q. Did this letter come to your attention in the ordinary course of your duty? A. It did.
- Q. How? A. Well, it came to my attention in conferences that we had with the members of the Guild, and also it came to my attention as the recipient. We received the letter after the Guild mailed it out. The stores received it, and the New York office received a copy of it.
- Q. Did you have any discussions with respect to it with your members, or the A.M.C.? A. I had discussion with the members; they had discussion with me, and I passed that information on to the executives of the F.O.G.A.
- Q. Was there any objection raised to the plan as set forth in that exhibit by the members of the A.M.C., in or about June, 1933? A. Yes.

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Q. Were those objections transmitted to the F.O.G.A.? A. Those objections were transmitted to the F.O.G.A.

Q. To the officials, executive officers? A. Yes, sir.

Q. What were the objections? A. The objection was that we could not go along with their plan as it appeared—as it would apply to price lines below \$10.75 cost.

Q. Will you just explain what you mean by that? Well, we stated that in conjunction with other of the offices in New York City working, jointly together, or at least called together to discuss this subject, called together . by the F.O.G.A. to discuss this subject jointly, that we represented retailers all over the country, some 1700 in number, who, for the most part, handled both better and inexpensive merchandise, ranging from a dollar up to the highest price lines, in some cases, and that most of these retailers handled merchandise in the more or less inexpensive to popular priced brackets, ranging, say, part way or halfway up to the price ranges that were handled by the Guild, and that we could go along and co-operate as it pertained to better merchandise, but we could not go along and co-operate below \$10.75 costs, because copies were prevalent in the industry; and that manufacturers were not in the habit of designing, and for that reason we would have to have an exemption from the Guild on those price lines if they wished us to co-operate, and unless they would give us such an exemption we would not endorse this movement to our respective retailers. And the Guild recognized at the time-at least they said so-that they were most anxious, the thoughts and ideas of the New York office representatives, because we knew-they said that we knew the problem of the retailer.

Mr. Rentner says that he does not want to hurt anybody, to foster his own plan, and that he would like to be helpful, and we said—we repeated, or, rather, I will repeat, that we said that below \$10.75 we could not go along, and Mr. Rentner said all right, he would go along with that plan, providing otherwise we would co-operate, since he

10406

could in no way see how merchandise, costing less than \$10.75 could in any way hurt merchandise produced by members of the F.O.G.A. at that time. He did not use the words "at that time," I am using them.

He made the statement at that time, and, therefore, I

qualify it that way.

Q. Well, at that time, what price lines were the members of the Guild manufacturing? A. I have already stated the price lines, they were largely from \$22.50 up, but in

some cases, from \$16.50 up.

Q. Well, as a result of the discussion that you had with the executives of the Guild, of the F.O.G.A.-strike that Did you recommend to the members of the A.M.C. that they should sign up the so-called "Declaration of Cooperation" as submitted to them by the Guild? A. I did so recommend.

Q. Did you also, as an executive of the A.M.C., or did officials of the A.M.C., sign the agreement with the F.O.G.A., submitted to them? A. Yes, the A.M.C. did sign the regular agreement furnished by the F.O.G.A. for such purpose.

Q. I show you Commission's Exhibit 92 and ask you if vou recognize that as the agreement, copy of the agreement, which was signed by the A.M.C .- that is, similar to the one, if that is not the exact language? A. No, this is not the one that we signed.

Q. Do you have a copy of the one you signed in your office? A. I think I have a copy—no, I do not have a copy. We sent our only copy to the Guild, and they could furnish you with a copy of the one we signed; but I know it was the regular form provided for in the spring of 1933.

Q. I show you Commission's Exhibit 99-E, and ask you if that is the-

Examiner Averill: What?

A. As I recall it-

10409

: 10410

Mr. Haycraft: The paper.

A. As I recall it, this is the copy of the agreement that we signed.

Examiner Averill: Is that the same agreement again?

Mr. Haycraft: No, it is attached to this letter, Commission's Exhibit 99.

Examiner Averill: Will you gentlemen bear with me if I would ask the reporter to read me the last part, not of this last question, but the other; it seems to me there is a conflict.

(The record was read.)

Mr. Haycraft: I told him there were two different letters.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

By Mr. Haycraft.

Q. When was it that you had this discussion with the officials of the Guild, and they granted the exemption that you requested? A. That was in the latter part of May and early June of 1933, at the time this letter was being prepared for mailing to the membership, the proposed membership.

Examiner Averill: When the witness says "this letter," he refers to Commission's Exhibits 94-A, B? Mr. Haycraft: Yes.

Examiner Averill: All right.

By Mr. Haycraft.

Q. Well, did you have any further discussion with the A.M.C., members of the A.M.C., with respect to the letter

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10412

itself, and the memorandum on the Guild's resolution, and the declaration of co-operation in anti-piracy attached to the letter— A. Yes.

Q, —Commission's Exhibits 99-A to E, after June 16, 1933? A. Yes, I did, before and after.

By Mr. Haycraft.

Q. Did you have a discussion with the members of the A.M.C. subsequent to June, 1933, with respect to a plan of the F.O.G.A. as expressed in Commission's Exhibits 99-A to E?

10415

Mr. Weisman: Now, your Honor, before the witness answers that question, I object to it unless he will specify in his answer the names of the people with whom he had the conversation, so that we may on our direct case examine them and, if necessary, cross-examine them to see whether he is truthful in his testimony.

Examiner Averill: First ask the witness to simply answer "yes" or "no" to that particular question, and then counsel may ask him other questions.

A. I did.

By Mr. Haycraft.

10416

Q. With whom did you discuss this matter? A. I discussed this whole situation primarily with the garment merchandise managers of the stores who were in the stores at that time.

Mr. Weisman; May I ask-

A. (Resumed.). Also with Col. Reilly, and with some of the store principals, not many, mostly garment merchandise managers. · Q. Where did you have this discussion? A. Why, I had the discussion in the New York office primarily.

Examiner Averill: Yours?

The Witness: Our New York office, yes.

By Mr. Haycraft ...

Q. When? A. When these people would visit New York and come here on business; I mean, we discussed the subject quite frequently, and as much as this subject required, and that was quite a good deal.

(There was a discussion off the record.)

Examiner Averill: On the record. Mr. Witness, will you please state whether about this time, and about this matter, did you have any discussions with any of the officials of the Guild?

The Witness: I did.

Examiner Averill: Where were such discussions held?

The Witness: I did hold these discussions with .
the Guild on their premises, in the office, at the time, located on Seventh Avenue, I think 5——

Mr. Albert: -12.

The Witness: -12.

Mr. Weisman: May it please your Honor, may we have the time fixed?

The Witness: I stated the time previously, May and June of 1923, that is in connection with this particular letter here.

Examiner Averill: That is what we are talking about.

Mr. Weisman: May I know what letter he is referring to? He says "this particular letter."

The Witness: June 16, 1933.

Examiner Averill: Commission's Exhibits 99-A and B.

10418

By Mr. Haycraft.

Q. In those discussions, did you present to the officials of the Guild the opinions and objections of the members of the A.M.C., as they were transmitted to you? A. I did.*

By Mr. Haycraft.

Q. What did the executives of the Guild tell you with respect to the objections and opinions of the members of the A.M.C. that you transmitted to them? A. I have already told you that it stated—that Mr. Rentner acknowledged the condition that prevailed as far as we were concerned, and agreed to an exemption on the co-operation in connection with merchandise below \$10.75 cost.

10421

By. Mr. Hayoraft.

Q. I notice that there is no such exemption in the written declaration of co-operation, or in the letter, Commission's Exhibits 99-A to E. A. That is right.

Q. Did Mr. Rentner make any explanation of that?

Mr. Weisman: Just a moment. I object to the attempt to vary the terms of a written instrument which they themselves have put into evidence. The exhibit is complete on its face, and full, and is an exhibit offered by the Commission. Now, they are seeking, obviously, in an effort to anticipate cross-examination, to impeach their own document, and in an obviously improper manner.

10422

Examiner Averill: One moment, gentlemen, until I read these exhibits that he speaks of. Did he add anything, or make any explanation?

(Last question read.)

The Witness: He did.

Mr. Weisman: Just a moment.

Examiner Averill: One moment, please, sir; there is an objection.

Mr. Haycraft: Explanation of that fact—those things he has just now testified to, with respect to them.

Examiner Averill: You mean Mr. Rentner, give an explanation of why the oral agreement to which the witness has testified, namely, that the members of the A.M.C. were to be exempt from co-operation in merchandise of a value of less than either \$10.75 or \$10—some places it is stated as \$10, other places as \$10.75. That is what you mean, is it not?

Mr. Haycraft: Yes.

Examiner Averill: With that explanation of the question in mind, if any other declaration was made to you later by Mr. Rentner as to why there was no reference to any such exemption in behalf of the A.M.C., in the form of documents which are covered by this exhibit, Commission's Exhibits 99-A to E, inclusive, and you have seen what they are?

The Witness: Yes, sir.

Examiner Averill: If he did make any, why, say so; if he did not, say so.

Mr. Weisman: May I make my objection first? Examiner Averill: Certainly, I thought you had made it.

Mr. Weisman: Well, a new question has been propounded for the purpose of the record; these documents are documents which have been offered in evidence by the Commission. They are documents that are signed not by us, but by the A.M.C.

Examiner Averill: They are not signed by anybody.

Mr. Weisman: Well, if they are not signed, the purpose of having them in evidence is merely to show the type—the exact context of documents that were signed.

10424

Examiner Averill: But there is nothing in here as far as this exhibit goes to show that any member of the A.M.C. ever signed the declaration of cooperation in anti-piracy, as it is headed, which is in here as Commission's Exhibit 99-E.

Mr. Weisman: Except-

Examiner Averill: That being the case-

Mr. Weisman (interposing): Well, that is not the case.

Examiner Averill: That is all it appears, may I say?

Mr. Weisman: May I refresh your recollection—except that this witness this morning testified that Commission's Exhibit 99-E was an exact copy of a document that A.M.C. signed. Am I correct about that, Mr. Bergdahl?

The Witness: As I recall it.

Mr. Weisman: Yes.

The Witness: That is an exact copy.

Mr. Weisman: That is an exact copy.

Examiner Averill: Yes.

A. Mr. Rentner told me, in the presence of other resident office managers, that he was giving us an exemption on merchandise below \$10, but would not make this as a general condition to all retailers, since the retailers that were not asking for it—he was not worrying about—he would take care of us but he did not care about the others particularly, since they were not as a g for it, why bring it up, and, therefore, he wanted nothing in writing to this effect, and it was a gentleman's agreement between us, and we agreed to that, and that was all right.

By Mr. Haycraft.

Q. Did you say you wished to correct a statement? A. Yes.

10427

Q. What was the statement? A. Yes, I did. He stated here, I think inadvertently, that the stores had signed Exhibit 99-A and B, and that the office had signed 99-E. E is the last one here. Now, the stores and the offices, as I recall it, signed 99-E, or unless they—that was, they had the privilege of making a—of writing it in their own words, if they wished. The letter in which \$10 is mentioned—I do not know that the \$10 is not mentioned in 99-E at all, it is merely mentioned in Mr. Rentner's letter, to which is attached 99-E, but in connection with the New York offices, I doubt whether very many of us ever got 99-A and B, that was verbally understood, that is, 99-A went out to the stores, that was generally circulated in the trade, and that was what contained the \$10 quotation.

Q. Well, Mr. Bergdahl, if you had not had this understanding or agreement with Mr. Rentner just described, would you have recommended to the A.M.C. stores that they sign the so-called "Declaration of Co-operation," or would you have signed the so-called "Declaration of Co-operation"?

Mr. Weisman: I object to the question as incompetent, irelevant and immaterial.

Examiner Averill: Read the question. (Last question read.)

A. I---

Mr. Weisman: Just a moment.

Examiner Averill: Wait a moment. He has made an objection.

The Witness: I am sorry.

Examiner Averill: I would like, with permission of counsel, to ask this witness if this paper, Commission's Exhibit 99-C——Show it to Mr. Weisman, too, so that he can see what I am referring to.

(Witness hands paper to Mr. Weisman.).

10430

10433

Mr. Weisman: Yes.

Examiner Averill: Is that paper—here is what I am after especially—if that paper was before him at the time that he recommended, as he says he did recommend, the signing of the declaration of co-operation, Commission's Exhibit 99-C.

Mr. Weisman: I have no objection to your Honor asking him that question.

Examiner Averill: I would like to know. You can both see the

Mr. Weisman: ,-the relevancy.

Examiner Averill: -the relevancy of it.

Mr. Haycraft: I was going to take that up next. Mr. Weisman: I would like, your Honor, to ask for an explanation of that.

Mr. Haycraft: I am going to take that up next. Examiner Averill: Read the question.

(Last question read.)

Examiner Averill: I should think that in fairness to the witness before he answers that question that his attention should be directed to Commission's Exhibits 99-C and 99-E.

Mr. Haycraft: C, D and E, all three.

Examiner Averill: And see if he had that paper before him or knew of its existence when he recommended it.

Mr. Haycraft: All right.

10434

By Mr. Haycraft.

Q. I show you Commission's Exhibits 99-C and D, and ask you if you received that in your office, or were you familiar with that paper at the time that you signed the so-called "Declaration" similar to Exhibit 99-E? A. I. don't recall ever having seen these.

Examiner Averill: You mean 99-C?

The Witness: 99-C.

Examiner Averill: Go ahead now and answer the question.

The Witness: In fact, I can state definitely that I never saw it.

By Mr. Haycraft.

Q. Now, will you answer my other question?

Mr. Weisman: Now, wait a moment, I have an objection to the other question. It has not been ruled upon. He asked him a question.

Examiner Averill: Yes, I know, but now that the witness has been shown those papers I am going to let him answer the question.

Mr. Weisman: May I respectfully object on the ground that that question is two questions in one, in the first place, and, in the second place, whether or not this grand A.M.C., or Mr. Bergdahl, while it may seem to him important; whether or not he recommended it, there is no testimony in this case to that effect that it would have made one iota of difference to these stores, and, as a matter of fact, it is in evidence that half of the stores, or at least three fourths of them, have repudiated Mr. Bergdahl and the A.M.C., and are no a co-operating with Guild.

So I mean it is entirely unimportant. There is no proper foundation laid for the question, would he have recommended it. The significance—

Examiner Averill: I think counsel will later thank me for overruling him. Note an exception.

A. Why, I should not have recommended this, and so told Mr. Rentney at the time, and—

10436

part of the answer be stricken out, and I ask that this witness be directed by the Court to confine him-,

self to the questions.

That question was perfectly plain, would be have recommended it, and when he answered "I would not," that was the end of that answer, and he knows We have here an intelligent witness.

Examiner Averill: Read the answer.

(Answer read.) ?

Examiner Averill: Strike everything from that answer after, his statement "I should not."

Counsel may bring out further questions about the matter, but as far as that question is concerned. that is the answer to it.

Mr. Haycraft: Is it stricken out, "that he would. not have recommended it"?

Examiner Averill: "Would not have recommended it" is not stricken out.

Mr. Haycraft: Read his answer.

(Answer read as follows: "A. Why, I should not have recommended this ___")

Mr. Haycraft: Strike out beginning "-and so told"?

Examiner Averill: Yes: my opinion is that is a sufficient answer to the question.

10440 By Mr. Haycraft.

Q. I will ask you to answer the second part of the question, would you have signed the so-called "Declaration" yourself, recommending the A.M.C., if you had not had such an agreement with Mr. Rentner?

> Examiner Averill: Is that not the same question?

> Mr. Haycraft: No. One is as to his recommending it to his members, and then the other, himself.

Mr. Weisman: In other words, Mr. Haycraft, notwithstanding your Honor's ruling, sees the vice of his question and is attempting to correct it after he has been permitted to answer it. My objection to it was that there were two questions in one.

Examiner Averill: Now, then, he has split them, we have had the witness answer as to what he should have done in connection with his members recommending to them. Now he is asked about himself.

Mr. Weisman: Yes.

Examiner Averill: He may answer that question. Go ahead.

10442

By Mr. Haycraft.

Q. Would you have signed it yourself? A. I would have signed it if the stores had first signed, because we are governed by the stores instructions.

Q. Did you transmit to Mr. Rentner your position with respect to requiring such an agreement from him before you would recommend the signing of the so-called "Declaration of Co-operation" to the member stores of the A.M.C.? A. Yes.

Mr. Weisman: Wait a moment. I object to that as being already twice answered.

Mr. Haycraft: No.

Examiner Averill: If it has already been answered, why, I do not know. The objection is overruled.

10443

Mr. Weisman: Exception. I may say in fairness to Mr. Haycraft, I expect to move to strike all this testimony out when he gets through with this line, as to Mr. Rentner. Mr. Rentner was not the Guild. Mr. Rentner was a member of the Guild—any more than Mr. Bergdahl is the A.M.C.

Herbert L. Bergdahl-For Commission-Direct.

Examiner Averill: What I am anxious to know from you gentlemen—off the record, if you please. (There was a discussion off the record.)

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. Who was Maurice Rentner at this time, Mr. Bergdahl? A. He was the director of the Guild, as far as I know.

Mr. Weisman: I ask-

The Witness: The chairman, or the head of it, anyway.

Mr. Weisman: I ask that the answer be stricken out. It is his guess. It is a poor one, I might say; it is a poor one.

The Witness: I think it is on the stationery.

Examiner Averill: Let me see some of those letters. That exhibit may show it there. That is the one from Mr. Rentner (referring to paper on the table).

Mr. Weisman: Yes, that is from him personally.

The Witness: It does not say on there. Some of those letters may show it.

Mr. Haycraft: Where is the one we just had?

Examiner Averill: Gentlemen, let us not waste time. I guess it can be admitted what he was. I believe you would not deny what he was, if he was anything. I do not know whether he is president, or what.

Mr. Weisman: There will be no question in this case. Mr. Reutner was one of our directors. He was a very active man in our affairs.

Examiner Averill; All right...

Mr. Weisman: But we deny his right to do what is contrary——

10445

Examiner Averill: Of course.

Mr. Weisman: —to our written letters. We object to having this witness come in and say, willy pilly, "Yes, we signed this," and say, "We took the word of Mr. Rentner for this."

The Witness: Your Honor, could I-

Examiner Averill: No, no.

Mr. Haycraft: I will ask him this.

By Mr. Haycraft.

Q. Mr. Rentner is chairman—apparently appears as chairman from the various letters.

Examiner Averill: Counsel admits he was one of their directors.

Mr. Haycraft: It is not a question of one of the directors, he was the executive, the director—

Mr. Weisman: No, he was not. When you are ready to take the stand and testify, I will subject you to cross-examination and show up your complete knowledge in this case.

Mr. Haycraft: I might do the same thing.

Mr. Weisman: You call me and try to.

Examiner Averill: Gentlemen, we will have it established later as to what Mr. Rentner was, what his position was.

Mr. Haycraft: He was the Guild, no question about it.

Mr. Weisman: Like you are the Federal Trade Commission—making a statement like that, that he was t'. Guild.

Mr. Feldman: Is Mr. Bergdahl the A.M.C.?

The Witness: What do you think?

Examiner Averill: Gentlemen, let us go on. The next question, please.

10448

By Mr. Haycraft.

Q. Subsequent to June, 1933, did you, in your official capacity with the A.M.C., co-operate with the F.O.G.A., in carrying out the agreement that you had signed? A. We did carry out our agreement with the Guild as far as it applied to merchandise from \$10.75 up is concerned.

By Mr. Haycraft.

Q. How long after June 16, 1933, did you first acquaint the members of the A.M.C. with the agreement that you had with Mr. Rentner? A. Well, I would have to look up to see my letters that went out on that to determine just the exact date that I did send out such word.

By Mr. Haycraft.

Q. During the year 1933, say from June on to the end of the year, did you have any further contacts with the officials of the F.O.G.A. with respect to their plan of antistyle piracy? A. Well, I recall that we had conversation with the F.O.G.A. They called certain meetings in which they apprised the resident officers of things that they were planning, and I attended such meetings during that year.

Q. Was there anything done by the F.O.G.A. during that period of time, with respect to checking up on retail dealers, members of your A.M.C., to determine whether or not they were co-operating with the Guild in the return of copies to manufacturers? A. I do not—

Q. By "copies" I mean copies adjudged to be copies of Guild dresses. A. I do not recall that any agressive action was taken to find out whether or not anybody was—

Mr. Weisman (interposing): Cheating.

A. (Resumed),—was living up to the agreement.

By Mr. Haycraft.

Q. Do you know whether or not during that period of time any retail dealer was red carded, so to speak, by the Guild?

> Mr. Weisman: I object to that as immaterial. Examiner Averill: You mean any retail dealer, member of their association?

Mr. Haycraft: Yes.

Examiner Averill: Of the A.M.C.?

Mr. Haycraft: Yes.

Mr. Weisman: Well, how would that be material?

Examiner Averill: I do not know. Let us see. Mr. Weisman: All right.

10454

A. I would not know.

Mr. Weisman: All right, I withdraw the objection, he would not know.

The Witness: I do not know, in fact. You had reference to the year 1933?

By Mr. Haycraft.

Q. Yes, that is right, all 1933. Are you familiar with any efforts that were made by the Guild during the balance of the year 1933, that is, from June until December, to enforce their plan, or to carry out their plan of an ipiracy? A. Well, I do not know that the Guild did anything to carry it out as an organization here from New York, no.

10455

Q. It did not come to your attention? A. It did not come to my attention.

Q. I will ask you whether or not you received copy of letter from Mr. Golby under date of January 5, 1934, and accompanying papers which are in evidence as Commission's Exhibit No. 621 A to G? A. I did receive them.

Herbert L. Bergdahl-For Commission-Direct.

Q. On or about the time A. On or about January.

Q. On or about that time?

Examiner Averill: What date is that?

Mr. Haycraft: January 5, 1934.

Mr. Weisman: May we have a recess? We are about half-way through the afternoon session—a recess of five minutes?

Examiner Averill: I was going to let you out at ten minutes to four.

Mr. Weisman: I have received a telephone call. Examiner Averill: All right.

(Whereupon a short recess was taken.)

Examiner Averill: All right, gentlemen.

By Mr. Haycraft.

Q. Calling your attention to Commission's Exhibit 621-A to G, I will ask you whether or not the subject-matter of this letter, and the accompanying documents, were called to your attention by officials of the Guild, prior to the issuance of this letter? A. A recall it, we had—they called the resident officers to a meeting at the headquarters of the F.O.G.A. to discuss these particular practices here.

Q. At or about that time or before? A. Well, it was before this was issued. As I recall it, this was a meeting in which these were discussed.

in which these were discussed.

Q. Was there any discussion of these various practices on the part of the A.M.C. at or about that time? A. No, we thought as a whole—I mean, concurred, that they were reasonable, as far as I recall it. I stated whatever objections I personally had at the meeting and I think, they were jointly arrived at as they are now, more or loss.

Q. During the year 1934, do you recall there having been brought to your attention any complaints from the Guild as to whether or not the members of the A.M.C.

. . . .

10457

were co-operating in the plan, in the anti-piracy plan? A. Well, I don't recall any particular citations that we were not co-operating. I recall getting a letter, I think, from the Guild, stating that we were co-operating.

Q. Was it that year or the following year? A. Well, I am not sure, I do not know just exactly when, but I do not recall any—I do not recall that very much went on as far as the differences of opinion, or otherwise, during the year 193—the balance of the year 1933 and 1934, inasmuch as the Guild recognized, or at least it worked out that way, that the exemptions—

By Mr. Haycraft.

10460

- Q. During the year 1934 do you have any recollection of being requested to co-operate, requested by the Guild, to co-operate in getting the Code Authority to recognize—A. To recognize what?
 - Q. To curb style piracy

Examiner Averill: To recognize it?
Mr. Haycraft: To curb style piracy.
Examiner Averill. Oh, to curb. Excuse me.
Mr. Haycraft: Yes.

A. Why, as I recall it, the Guild expressed a desire to get into the code such a clause governing copying of merchandise.

By Mr. Haycraft.

10461

- Q. Did you co-operate any in that effort on the part of the Guild? A. I think I would say I assisted materially in doing so.
- Q. What did you do? A. I helped to frame the clause that was presented to the Government for approval——

Examiner Averill: When you say "Government" you mean "Code Authorities"?

The Witness: Well, the Code Authorities.

Mr. Weisman: Ha, ha!

The Witness: I understood it had Federal endorsement.

Examiner Averill: I know, sir, but the Government is so huge that unles we have some idea as to what particular branch, we have no idea what you have reference to.

The Witness: . I see.

Examiner Averill: It might have been some other branch, Department of Justice, or something else.

The Witness: I am sorry.

10463

By Mr. Haycraft.

Q. Who served with you on that committee? A. As I recall it, representing the retailers a Mr. Irving Fox, and someone from Macy's.

Mr. Weisman: Will you tell us who Mr. Irving Fox, was, or do you want to keep that dark?

The Witness: No, I do not want to keep that dark at all.

Mr. Weisman: Tell us.

. The Witness: He is counsel for the N.R.D.G.A.

By Mr. Haycraft.

Q. National Retail Dry Goods Association, is that it? 10464 A. Yes.

Q. And someone from Macy's, did you say? A. A gentleman from Macy's, whose name I do not recall. Mr. Fox and I met at the N.R.D.G.A., possibly with one or two others, but I do not recall—to discuss the advisability of retail participation in the clause, in trying to get a clause into the code, and subsequently we had a meeting, at the Dress Code Authority headquarters at 1440 Broadway, at which were present retailers as well as manufacturers,

manufacturers representing higher-priced makers, as well as low-priced makers, but not so many low-priced, mostly the better end, I think from \$10.75 up; probably, as far as the manufacturers were concerned, were represented at that meeting—the Code Authority executives, and a few retailers.

Q. Did anything come out of that by way of a code legislation? A. Yes, a clause governing copying of merchandise was framed, which was intended to be presented as an amendment to the Dress Code Authority.

Q. Coming now into the year 1935, Mr. Bergdahl, did you have any discussions with the executives of the F.O.G.A. during the first six months of that year, with respect to the policy of the Guild and the extent of cooperation on the part of the retail dealers, members of A.M.C.? A. Yes, I did.

Q. When did those discussions take place? A. Well, early in the year 1935, as I recall it, Mr. Post called at an A.B.O. meeting.

Q. First tell us who Mr. Post was, so far as you knew him? A. Mr. Al Post at that time director—executive director of the F.O.G.A., having been appointed in the fall of 1934, as I recall it, called on us to invite our co-operation, and further strengthening the Guild program to control copying. Poes that answer the question?

Q. What did he have to say with respect to the Guild program as to copying? A. Well, he invited our additional co-operation and asked our ideas about it at the time, and we told him we could go along if and when the conditions that we had previously stated had been met by the Guild and by the situation in the industry, by conditions in the industry; namely, that we could go along and co-operate below \$10.75 cost when the chain stores would be a part of the Guild, and when the industry in the low-priced brackets would have learned how to create so-called "original" designs.

10466

Herbert L. Bergdahl-For Commission-Direct.

Q. Well, what was the proposition that they were making to you at that time that caused you to make that statement? A. Well, I do not recall that there was a concrete proposition made, that was to be subject to further discussion.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 862 for Identification, and ask you if you can identify it?

> (A paper was thereupon marked for identification Commission's Exhibit 862.)

10469

A. That is a letter for the most part dictated by the writer by myself—and sent by the Association of Buying. Offices, signed by Mr. H. I. Kleinhaus, Executive Secretary, explaining the—

Q. Let us not go into that. A. I understand.

Q. What is the date of that? A. March 30, 1935.

Mr. Haycraft: I offer that in evidence.

Mr. Weisman . May I see it?

(Mr. Haycraft hands Commission's Exhibit 862 for Identification to Mr. Weisman.)

Mr. Weisman: All right, then, I will not object if you will let the answer go in.

Examiner Averill: All right.

(There was a discussion off the record.)

Examiner Averill: On the record.

10470

By Mr. Haycraft.

Q. At the time that letter was written, did you have anything to do with the F.D.O.? A. I was chairman of their F.O.G.A. committee; I think that is what they were.

Q. About March 30, 1935?

Mr. Weisman: Does the record show clearly that the last remaining answer that I objected to was stricken out?

Examiner Averill: Yes.

Mr. Weisman: I want to be sure.

Examiner Averill: It was stricken out. The reporter has the language that was stated.

By Mr. Haycraft.

Q. I asked you whether you had a meeting of this committee on or about March 30, 1935. A. Yes, we did, a meeting of the committee as well as the Association. That was a weekly meeting, if I recall, a weekly meeting.

10472

- Q. Who called the meeting? A. This subject was discussed at a meeting, a weekly meeting of the offices, called by the president at that time, Mr. John Bloch.
- Q. President of what? A. The Association of Buying Offices.
- Q. At this meeting, what was the subject of discussion? A. Well, one of the subjects of discussion was an article that we had read in the "Women's Wear Daily," a short article which stated that the Guild had decided to invite the \$10.75 manufacturers to register their merchandise for protection.
- Q. Was that matter discussed at that meeting? A. That matter was discussed that day, and this letter was dictated and sent to the Guild.

Q. All right.

10473

Examiner Averill: Who was the Guild?

The Witness: The Association of Buying Offices.

Mr. Haycraft: I made a mistake.

Examiner Averill: Oh, A.B.O.

By Mr. Haycraft.

Q. Subsequent to the date of this letter, March, 1935, did you have, or attend, a joint meeting of the Association of Buying Office and the F.O.G.A.? A. As I recall it.

Q. Where this matter was discussed? A. As I recall it, this letter resulted in a joint meeting, if I recall correctly.

(A paper was thereupon marked for identification Commission's Exhibit 863.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 863 for Identification, and ask you if you can identify that (showing paper to witness)? A. Yes, that is the letter as the result of the joint meeting, summing up the understanding.

Q. Who wrote it? A. Written by Mr. Kleinhaus, secretary of the Association of Buying Offices, to Mr. Maurice Rentner, chairman of the F.O.G.A., dated April 5, 1935.

Mr. Haycraft: I offer it in evidence.

Examiner Averill: Any objection?

Mr. Weisman: I have no objection if Mr. Haycraft would like to stipulate that the answer to this may go in.

Mr. Haycraft: I expect to offer it.

Examiner Averill: Gentlemen, the paper that has been marked for identification Commission's Exhibit 863, which appears to be a mimeographed copy of a letter dated April 5, 1935, addressed to Maurice Rentner, chairman, F.O.G.A., New York, from the secretary of the A.B.O., Inc., will be received in evidence and marked Commission's Exhibit 863.

(The paper heretofore marked for identification Commission's Exhibit 863 was marked as an exhibit, and received in evidence.)

(A paper was thereupon marked for identification Commission's Exhibit 864.)

(A paper was thereupon marked for identification Commission's Exhibit 865.)

Mr. Weisman: Are you going to offer the reply? Mr. Haycraft: Tam coming to that.

Mr. Weisman! May it please your Honor, the answer to this is here.

Examiner Averill: It cannot go in all at once. Mr. Weisman: But I think obviously the time to put it in is with the original, letter. I am not going to fight about it. I am going to insist. might as well get it now.

Examiner Averill: Be a little patient.

By Mr. Haycraft.

Q. I will ask if you can identify this letter, Commission's Exhibit 864 for Identification? A. Yes, I can identify that.

> (A paper was thereupon marked for identification Commission's Exhibit 8661)

By Mr. Haycraft.

Q. Did you send this out to garment merchandise managers of the A.M.C.? A. & did.

Q. Does that relate to the subject matter of the exhibit just received in evidence? A. That does:

Examiner Averill: Commission's Exhibit 863? Mr. Haycraft: Exhibit 863. I offer this in evidence, dated April 10, to garment merchandise managers, entitled "Developments in F.O.G.A.," from the witness, Commission's Exhibit 864 for Identification.

Mr. Weisman: I have no objection.

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 864 for Identification, bearing date April 10, 1935, and headed "Developments in F.O.G.A." apparently sent to garment merchandise managers, addressed to merchandise managers, and from H. L. Bergdahl, merchandise manager, will be received in evidence and marked Commission's Exhibit 864.

(The paper, heretofore marked for identification Commission's Exhibit 864, was marked as an exbibit and received in evidence.)

10481 ByoMr. Haycraft.

Q. The merchandise managers referred to in that exhibit are merchandise managers of whom? A. Merchandise managers of ready-to-wear in our stores.

Q. That is the A.M.C. stores? A. A.M.C. stores.

Q. I show you Commission's Exhibit 865 for Identification, an original letter from Albert M. Post to the Association of Buying Offices, Inc., dated April 23, 1935, and ask you if you can identify that as a reply to Commission's Exhibit 863? A. I can, sir. That is a reply to a letter dated April 5. That letter read, it being a typographical error, "We have your letter of April 6th."

Q. But it is a reply to this letter (showing paper to witness)? A. It is a reply to this letter.

10482

Mr. Haycraft: I offer it in evidence.

Examiner Averill: In other words, the witness when he makes that statement means the letter bearing date April 5th, now in evidence as Commission's Exhibit 863?

Mr. Haycraft? Yes, the first line just read says, "We have your letter of April 6th."

Examiner Averill: I see.

Mr. Weisman: You are offering this letter in evidence, to which I have no objection.

Examiner Averill: No objection?

Mr. Weisman: I would ask your Honor to read this paragraph.

Examiner Averill: Just a moment.

Mr. Haycraft: And as soon as he reads that' read the next one.

Examiner Averill: Wait a moment, I have not put this in yet.

Mr. Haycraft: Pardon me.

Examiner Averill: Gentlemen, there being no objection, a letter heretofore marked Commission's Exhibit 865 for Identification, consisting of two sheets firmly attached, will be received in evidence and marked Commission's Exhibit 865, the same being a letter dated April 23, 1935, addressed to Association of Buying Offices, Inc., New York City, and signed "Albert M. Post, Executive Director." The evidence shows Mr. Post is of the F.O.G.A.

(The paper, heretofore marked for identification Commission's Exhibit 865, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Upon receipt of this letter, Commission's Exhibit 865, was there a meeting of your committee held? A. 10485 Upon the receipt of—

Q. Mr. Post's letter. A. —Mr. Post's letter, dated April 23?

Q. Yes. A. Yes, we had a meeting upon receipt of this; I do not say just because of this, but we had a weekly meeting at which this letter was discussed.

Q. Did you address a letter to Mr. Post in reply to that? A. We did.

Q. I show you Commission's Exhibit 866 for Identification, and ask— A. When I say "we," in this case it means the A.B.O., the Association of Buying Offices.

Q. I show you Commission's Exhibit 866, and ask you if you can identify that as a carbon copy of a letter from H. I. Kleinhaus, executive secretary of the Association of Buying Offices, Inc., addressed to Mr. Maurice Rentner, chairman of the Fashion Originators Guild of America, also attention of Mr. A. M. Post, dated April 27, 1935, and a reply to Mr. Post's letter of April 23, 1935, which is in evidence as Commission's Exhibit 865 (handing paper to witness)? A. This is the reply to Mr. Post's letter of April 23, 1935.

10487

Q. I will ask you whether or not the letter which you just identified represents the judgment and opinions and attitude of the members of the A.B.O. meeting held on April 26, 1935?

Mr. Weisman: Just a moment. I would like for you to read that prize question to his Honor. We now have a letter in evidence—

Examiner Averill: One moment.

Mr. Weisman: Now, just

Examiner Averill? Wait. Read the question.

(Last question read.)

Mr. Weisman: The letter is in evidence and it means what it says, and this statement whether it represents the attitude, and so forth, and so on, ad nauseum, does not add to of detract from the letter, and I submit the question is wholly improper and incompetent. He offers a letter in evidence and the letter speaks for itself.

Examiner Averill: One moment, please, before you answer. I will have to sustain that objection, gentlemen. I think the letter, so far as it goes, speaks for itself, in regard to the feelings of the members of the Association, of the A.B.O.

Mr. Haycraft: Well, if that is conceded—— Examiner Averill: It has not been received in evidence.

Mr. Haycraft: I am offering it in evidence. Examiner Averill: Yes.

Mr. Hayeraft: Of course, I want to point out that the letter does not bear the witness' signature, and I am asking the witness as to whether or not the statement contains, as he recalls, what was the attitude of the members of the meeting.

Mr. Weisman: If you are going to take that attitude, then I will object to the witness putting this letter in evidence, and ask you to bring Mr. Kleinhaus in and ask to submit Mr. Kleinhaus to cross-examination.

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10490

Examiner Averill: I have no objection to him asking the witness, apart from his letter, if he was present at a meeting, to which this letter may have referred, and what took place at that meeting, if he wants to.

Mr. Haycraft: All right.

Examiner Averill: But it is all here in the letter, and I do not see why it is necessary to go into it again.

Mr. Haycraft: I merely want to show that what is in the letter is in evidence.

· Examiner Averill: It is already in evidence.

Mr. Weisman: The letter is in evidence.

Examiner Averill: It is going to be received in evidence—I have not got it in yet but it will be. The copy of the letter bearing date April 27, 1935, from the Association of Buying Offices, Inc., by H. I. Kleinhaus, executive secretary, to Maurice Rentner, chairman, F.O.G.A., New York City, and heretofore marked Commission's Exhibit 866 for

Identification, will be received in evidence and marked Commission's Exhibit 866.

(The paper, heretofore marked for identification Commission's Exhibit 866, was marked as an exhibit and received in evidence.)

(Whereupon, at 3:50 o'clock P. M., November 17, 1936, the hearing in the above-entitled matter was adjourned.)

10493

Room 901, 45 Broadway, New York, New York, November 18, 1936.

Met; pursuant to adjournment, 10 o'clock A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same appearances.)

PROCEEDINGS.

Examiner Averill: This is a reconvening of Docket No. 2769. Gentlemen, we will proceed when you are ready. Mr. Haycraft: All right, Mr. Bergdahl.

10494

HERBERT L. BERGDAHL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Now, the last matter that I called to your attention, Mr. Bergdahl, was a letter from the Association of Buying Offices to Maurice Rentner, chairman of the F.O.G.A., under date of April 27, 1935, in reply to Mr. Post's letter of April 23. Did you have any further discussion with the officials of the F.O.G.A. with respect to the subject-matter of these two letters? A. Well, I think we did have some discussion; yes, sir; shortly after April 27—they were the very first part of May.

Q. Was anyone else besides you in on the discussion? A. Yes, there was a committee designated from the Association of Buying Offices, consisting of, as I recall it, Mr. Greenebaum, Milton Greenebaum, Mr. John B. Sweeney, myself, and Mr. Post, Mr. Reinitz—Mr. Post representing the F.O.G.A., and Mr. Reinitz representing the \$10.75 manufacturers, and I think Mr. Kleinhaus of the Association of Buying Offices.

10496

- Q. Where was this meeting held? A. This was held at the Office of the Specialty Stores Association, at 1441 Broadway, I think that is. I am not sure about that.
 - Q. When was it held? A. I believe the date was May 4.

Mr. Haycraft: I ask that this paper be marked for identification.

(A paper was thereupon marked for identification Commission's Exhibit 867.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 867 for Identification and ask you if you can identify it?. A. Yes, sir. These are the minutes that we agreed—

10497

Mr. Weisman: No. The answer to that question is either "yes" or "no."

The Witness: Yes.

By Mr. Hayeraft.

Q. What is it? A. These are the minutes-

Hefbert. L. Berydahl-For Commission-Direct.

Mr. Weisman: I object to that. I object to the witness describing the document until it goes into evidence. He is now going to testify as to what it is. I am entitled to see it before he refers to the contents of it, and before a witness begins to read from its contents and place them into the record. I think that he should identify it and then it should be offered into evidence before anything further is done.

Mr. Haycraft: I want to get some further identification.

Examiner Averill: He said the date was so and so. He can state whatever it is, a letter, minutes, and so on.

10499

By Mr. Haycraft.

Q. Go ahead. A. These are the minutes of the meeting held on May 4, 1935.

Q. Meeting of who? A. These several gentlemen that I have just mentioned representing the organizations that I have just mentioned.

Q. Who prepared the minutes, this paper? A. I am not sure.

Q. Where did you get it? A. They were prepared at the time when we were in the meeting, but who prepared this particular copy I cannot say whether it was Mr. Kleinhaus or Mr. Reinitz; I cannot say.

10500

Q. I show you Commission's Exhibit 868 for Identification and ask you if you can identify it? A. This is, as I recall——

Mr. Weisman: I think the answer to that question should be either "yes" or "no" if he can identify it.

A. I can. I recall it.

10502

By Mr. Haycraft.

- Q. What is it? A. It is a copy prepared by Mr. Reinitz at the time that this meeting was in session, that we were in session at this meeting.
- Q. Where did you get it? A. I believe that Mr. Reinitz made one copy at the time for himself and gave us one copy and he kept one copy.
- Q. Is this the copy that he gave you? A. This is the copy that he gave this committee that was there.
- Q. Does that—where did you get it? A. I got it from the files of the Association of Buying Offices.
- Q. Where did you get 867 for Identification? A. Same place.
- Q. Can you testify whether or not either 867 for Identification, or 868 for Identification, correctly sets forth what transpired at this meeting, what occurred at this meeting?

Mr. Weisman: I object.

Examiner Averill: Sustained.

By Mr. Haycraft.

Q. Do you have any independent recollection of what occurred at that meeting? A. I do.

Q. Will you testify as to what that recollection is? A. Well, we spent a whole lot of the session—in fact, we spent the whole of the session, or, at least, the better part of the session more or less on a discussion of the question of taking in the \$10.75 price groups as members of the Fashion Originators Guild of America, particularly the problems that were involved as far as the retailers were concerned. We pointed out that the condition was no different that time than had prevailed in 1933 when the Fashion Originators Guild of America asked us to sign the original agreement, and that unless some provision could be made for leniency in the enforcement of the policy we could not agree to recommend to the retailers, rather, who repre-

10505

sented—the retailers whom we represented that they should go along and take in the \$10.75 manufacturers. We particular grame down to two points that until such time as the chain store operators had become a partner in this program, or signed up with the Guild, and until such time as the low-end manufacturers were—and until such time as the low-end manufacturers would have become prepared with designing staffs to take care of the retailers' requirements we would have to expect, as I said before, leniency as to the enforcement of the piracy law on lowend merchandise. We further agreed, of at least, discussed, and I think that there was an agreement down there between us that the Fashion Originators Guild of America was to send out a letter to the retailers containing the gist of what I have just explained as to our discussion at this meeting, and to convey to them that there was to be some leniency while this program was being developed so that the retailers could go along, at least to convey to our membership that there was an understanding that they would have an exemption or leniercy on low-end merchandise. We went into that at some length at the meeting to define what leniency should mean. All of this was to be put in a letter which was to go out to retailers from the Fashion Originators Guild of America prior to taking up the \$10.75 manufacturers into the Guild.

Q. Was such a letter ever sent? A. As far as I know, no such letter was ever sent.

10506

Q. Did Mr. Reinitz ever submit to you a draft of such a letter?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant as to what he did or did no do. I submit that the question is obviously incompetent, immaterial, and irrelevant for the reason that he is now calling on this witness for an answer to corroborate or bolster up his own testimony.

He says that he does not know of any letter ever being sent. That closes that line of inquiry.

Examiner Averill: Objection overruled. He may

answer that question.

Mr. Weisman: Exception.
Examiner Averill: Noted.

A. Mr. Reinitz did submit a letter to us as a proposed letter to be sent to retailers. The letter was a letter that would come up for consideration at their governing body or board, and it was the one that it was proposed to send out.

Mr. Haycraft: I ask that this document be marked Commission's Exhibit 870 for Identification.

10508

10509

(A document was thereupon marked for identification Commission's Exhibit 870.)

Examiner Averill: Now, I want to get the status of these exhibits because I think we are getting considerably confused on the record as to just what they are. We have 867 for Identification.

Mr. Haycraft 8 867 for Identification, the witness has identified as being the minutes of a meeting he attended.

Mr. Weisman: Do not describe them.

Mr. Haycraft: 868, draft of minutes by Reinitz.

Mr. Weisman; I object to that.

Examiner Averill: I do not want that. I just want to know what the numbers are at present.

Mr. Haycraft: 869 has not been identified by the witness.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 869 for Identification—

Examiner Averill: For identification,

Herber L. Bergdahl-For Commission-Direct.

By Mr. Haycraft.

Q. For identification, and ask you if you know what it is? A. This is a letter from Mr. Reinitz.

Mr. Weisman: I o 'ect' to him describing it. Examiner Averill: Sustained.

By Mr. Haycraft.

Q. What is the date?

Mr. Weisman: I object. He has identified it sufficiently,

Examiner Averill: Overruled. Proceed.

10511

A. This is a letter from Mr. Reinitz dated May 9, 1937.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 870 for Identification, and ask you if you know what it is, and if you can identify it? A. This is an attachment to Mr. Reinitz' letters of May 9.

Q. How did these papers come in your possession? A. Well, from the Association of Buying Offices.

Q. I will ask you whether or not Commission's Exhibit 870 for Identification, purports to be a proposed Guild letter.

10512

Mr. Weisman: I object to what anything proposes to be, especially a description of any paper. It is certainly highly improper.

Mr. Haycraft: I am entitled to that description.
Mr. Weisman: I submit that he is not entitled
to any proposals. Many proposals are made, and
disposals are sometimes few.

Examiner Averill: If the paper does not state it and clearly on its face, you are entitled to some further identification. Mr. Haycraft: He says a Guild letter to retailers. I am asking whether this is one that he referred to in his testimony.

Examiner Averill: Overruled. He has not testified to that paper as I recall it. The moment you offer it you can go into that further.

Mr. Weisman: Then you will have to show it to me.

Examiner Averill: If the paper does not show on its face what it was, who it is from, and to whom it is addressed, or what it is, it is proper to ask what the paper is but not its contents. There is a clear line of distinction there. If it does show on its face what it is, why, it speaks for itself and that is not proper.

Mr. Haycraft: I ask that this paper be marked for identification.

(A paper was thereupon marked for identification Commission's Exhibits 877-A and 871-B.)

By Mr. Haycraft.

Q: I show you Commission's Exhibits 871-A and B for Identification, and ask you if you can identify it? A. This particular paper is—

Mr. Weisman: I object.

Examiner Averill: Sustained.

10515

10514

By Mr. Haycraft.

- Q. Can you identify that? A. Yes.
- Q. Yes? A. Yes.
- Q. What'is it? A. That was an approval.

Mr. Weisman: I object.

Examiner Averill: Sustained.

Herbert L. Bergdahl-For Commission-Direct.

By Mr. Haycraft.

Q. No. I do not want to know what that is, but I want to know what the paper is. A. This is a letter from the Association of Buying Offices.

Examiner Averill: And to whom does it go?

By Mr. Haycraft.

Q. To whom is it addressed? A. It is a copy of a letter from the Association of Buying Offices to Mr. Bert Reinitz. Q. Of what date? A. It is dated May 13, 1935.

10517

Mr. Haycraft: I ask that these papers be marked for identification.

(Papers were thereupon marked for identification Commission's Exhibits 872-A and 872-B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 872-A and 872-B for Identification, and ask you to state what it is? A. This is my letter to our stores with regard to the agreement between the merchandise managers in our stores, explaining my understanding—

Mr. Weisman: I object, your Honor. You see the vice of this.

Examiner Averill: No, no. Sustained. Do not . say that.

10518

By Mr. Haycraft.

- Q. No. Under what date is it? A. Under date of May 13, 1935.
- Q. Did you send this letter out of May 13, 1935, after you had— A. What is that?
- Q. Before you sent this letter out on May 13, 1935, had you had any further discussions with the officials— I

show you Commission's Exhibit 873 for Identification, being an original letter, signed by Albert M. Post, addressed to the Associated Buying Offices, and dated June 21, 1935, and ask you if you identify that (handing paper to witness)?

> Mr. Albert: Your Honor please, Mr. Weisman is paying no attention to the question; he is reading previous exhibits, and now Mr. Haycraft commences-

> Examiner Averill: I know he is, but you canpay attention to this hearing. I am going to save any rights Mr. Weisman has, and he knows it.

Mr. Weisman: Indeed I do, your Honor; thank 10520 you.

A. What is that?

By Mr. Haycraft.

Q. Do you identify that?

Examiner Averill: Do you identify that?

By Mr. Haycraft.

Q. Did you receive that? A. Yes, the Association of Buying Offices received it.

Q. That is where you got it? A. Yes. ..

Q. Who was Mr. Reinitz at the time that this correspondence and meeting took place in May and June of 1935?

Mr. Weisman: If he knows.

A. Bert Reinitz is the publicity relations man, and runs his own office, an office of that nature, and he is, as I understand, and as I have been told by Mr. Reinitz as well as by Mr. Post and Mr. Rentner, that he represents the 10522

Herbert L. Bergdahl For Commission-Direct.

\$10.75 manufacturers as publicity agent as well as the Guild.

Examiner Averill: What guild?

The Witness: The Fashion Originators Guild of America.

Mr. Haycraft: I ask to have this document marked for identification.

(A document was thereupon marked for identification Commission's Exhibit 874.)

By Mr. Haycraft.

Q. I show you a letter from the Guild to yourself, dated July 1, 1935. Did you receive that? A. I did.

Mr. Haycraft: I ask that this be marked for identification.

(A document was thereupon marked for identification Commission's Exhibit 875.)

Mr. Weisman: This is one which is already in. Mr. Post: It is in a couple of times, I think.

Mr. Weisman: I would like for your Honor to read it. It is in already. I think it went in at Philadelphia.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 875 for Identification, and ask you if you can identify it? A. This is a letter dated July 3, 1935, which I sent to our garment merchandise managers, a copy to our general merchandise managers in our stores of the A.M.C.

Q. Did you also send a copy of it to Mr. A. M. Post?
A. I did.

Q. Of the Fashion Originators Guild of America? A. I did.

Q. Did you put that on as a result of the N.R.A. decision? A. I did.

Mr. Weisman: Then I want it to stay on. I want it to appear. I will ask you a few questions about that later on.

The Witness: I will be glad to answer them.

Examiner Averill: If you want it on there we will put it on, and if you do not want it on there, there is no objection to it going off, I suppose.

Mr. Haycraft: Not under the circumstances.

Mr. Weisman: We have a question to ask about this next one.

10526

By Mr. Weisman.

Q. I notice there is something in red pencil on here, and also underscoring in the body. I do not suppose that was on the letter when you got it? A. No.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 876, Mr. Bergdahl, purporting to be an original letter from Mr. Post to yourself, dated July 2, 1933, and ask you if you received this letter? A. Right.

Q. I call your attention to the pencil and pen and red pencil notations in the upper left-hand corner. Were those notations on the letter when you received it? A. No, sir. I placed them on there.

10527

Mr. Haycraft: I offer the letter in evidence without the notations.

Mr. Weisman: May I see it?

Mr. Haycraft: Here it is. I ask that this be marked for identification.

(A letter was thereupon marked for identification Commission's Exhibit 877.) Mr. Weisman: With regard to Commission's Exhibit 876 for Identification, now offered in evidence, Judge, I have not got any serious objection. To me it is not anything that is material or competent in this proceeding. I would like your Honor to read it, and if you think it will help you in determining the issues—it is a personal letter—I will withdraw my objection. I shall look to your Honor for guidance in this matter.

Mr. Haycraft: I would like to ask a question before you rule, your Honor.

Examiner Averill: Certainly.

10529

By Mr. Hayeraft.

Q. Is that letter in reply to your comment referred to in Commission's Exhibit 875? A. This is in reply to that letter, if that is what you mean.

Mr. Weisman: Except that it appears that it is not. If you will read the letter, it says that it is not. That is the trouble with questions of this kind where the witness simply flies right off the handle and says that this letter is in reply to it because this definitely says that the other letter was in reply to it.

By Mr. Hayeraft.

10530

Q. I will ask the witness if you have any such letter? A. I do not have it; at least, it does not specify the date, and it may be that Mr. Post can produce it. I do not know where it is. I cannot. I do not know what it refers to.

Examiner Averill: Gentlemen, now, about this paper. The paper heretofore marked Commission's Exhibit 876 for Identification, the same being a let-

ter bearing date July 22, 1935, a form letter from Albert M. Post, Executive Secretary, Fashion Originators Guild of America, to Mr. H. O. Bergdahl, New York City, will be received in evidence and marked Commission's Exhibit 876.

(The document heretofore marked for identification Commission's Exhibit 876, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 877 for Identification, and ask you if that/is the original of the letter which -rather, I ask you if the original of that letter was sent to Mr. Post under the date shown thereon? A. I did send him such an original letter under that date. July 22.

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Mr. Haycraft: I offer the letter in evidence.

Mr. Weisman: May I see it?

Mr. Haycraft: Here it is.

By Mr. Haycraft.

Q. This is a carbon copy of the letter? A. This is a carbon copy of the letter under date of July 22, which I sent to Mr. Post.

Mr. Haycraft: I offer that in evidence. .

Mr. Weisman: Let me look at it.

Mr. Haycraft: I ask that this be marked for 10533 identification.

(A document was thereupon marked for identification Commission's Exhibit 878.)

By Mr. Haycraft.

Q. This will be the next one. You can be looking this one over. A. All right.

Herbert L. Bergdahl-For Commission-Direct.

Mr. Weisman: Is this the answer to this?

Mr. Haycraft: I wish you would not do that. The Witness: The witness was reading it.

Mr. Haycraft: I am not offering it in evidence. I am offering this one in evidence.

Mr. Weisman: I do not think it is proper to show the witness these letters when they are not offered, or properly handed to them.

Examiner Averill: Gentlemen, a paper which has heretofore been marked Commission's Exhibit 877 for Identification, and which appears to be a copy of a letter bearing date of July 22, 1935, in two sheets firmly fastened together, the same being written by Mr. H. O. Bergdahl to Mr. Albert M. Post of the F.O.G.A., New York City, will be received in evidence and marked Commission's Exhibit 877.

(The paper heretofore marked for identification, Commission's Exhibit 877, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 878 for Identification, and ask you if you can identify that as the original letter received by you from Albert M. Post of the Fashion Originators Guild of America? A. Yes. That is Mr. Post's reply to the letter I sent him under the date of this other one.

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- Q. That is Commission's Exhibit 877? A. That is right,
- Q. I notice there are certain pencil notations in this letter both in black pencil and in red pencil. Were they on the letter when you received it? A. No.

By Mr. Hayeraft.

Q. I show you Commission's Exhibit 879, and ask you if you received that from Mr. Post, being a letter dated August 12, 1935? A. Yes.

- Q. I show you Commission's Exhibit No. 881, which purports to be a carbon copy of a letter from Mr. Post, and ask you where that was? A. That was attached to Commission's Exhibit 879.
 - Q. When you received it? A. Yes.

Q. I also show you Commission's Exhibit 880— A. It was not attached—it was enclosed when I received it.

- Q.—carbon copy of a letter from Mr. Post to Bulloks, under date of August 12, 193. A. That was enclosed with 879 when I received it, both of them.
- Q. I notice that there are certain pencil notations on these papers; were they on there when you received them? A. Yes. That is, some were and some were not on there when I received them. These were not on there.

10538

By Mr. Haycraft.

- Q. I show you. Commission's Exhibit 882, which purports to be an original letter from Mr. Post to yourself, under date of August 21, 1935, and ask you if you received that letter (handing paper to witness)? A. I did.
- Q. I notice certain lead pencil notations at the bottom, "P. S.," in whose handwriting is that? A. Those were on the letter when I received it, and I recognize that as similar to Al Post's; the ones in the upper left-hand corner are my own, and were not on there when the letter was received.
- Q. And the same with reference to the red pencil markings? A. Yes, that is right, that is my writing.

10539

By Mr. Haycraft.

Q. Did you hold any discussions, or meetings, with merchandise managers, or members of the A.M.C., between August and Recember of 1935, where the subject of returns of garments to manufacturers was discussed? A. Well, I would have to refresh my memory to say for sure

Herbert L. Bergdahl-For Commission-Direct.

what dates we held the meetings on, but we did hold meetings and this subject was discussed.

Q. Did you, as representing the A.M.C., also discuss this matter at meetings of the A.B.O.? A. Yes, we did.

Q. I'show you Commission's Exhibit 885 for Identification, and ask you if you can state what that is?

Mr. Weisman: Now, I am objecting to him stating what it is.

Examiner Averill: Tust state if you can identify it.

By Mr. Haycraft.

10541

Q. Can you?

Examiner Averill: That is what he means.

A. I can identify it.

By Mr. Haycraft.

Q. What is it? A. That was a summary of the problems that pertained to co-operation on low-end merchandise presented at a meeting held at the Associated Dry Goods Corporation offices on Fifth Avenue, New York City, Fifth Avenue and 34th Street, at McCreery's, at which was discussed——

 $1054\overset{\circ}{2}$

Mr. Weisman: No, no, no, do not tell us what was discussed.

The Witness: I am sorry.

Mr. Weisman: I submit he has told us. The Witness: I think I have covered it.

Examiner Averill: That is all right; he has stopped.

(The paper was marked for identification Commission's Exhibit 885.)

Herbert L. Bergdahl—For Commission—Direct. Irving E. Plaut—For Commission—Direct.

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By Mr. Haycraft.

Q. Where did you get this? A. I was at the meeting when it was handed out by Mr. DuBrois, I believe.

Q. Well, were the subjects listed here all discussed? A. Yes, they were.

Mr. Haycraft: I offer it in evidence. Examiner Averill: Any objections?

IRVING E. PLAUT was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

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Examiner Averill: Give the reporter your name, please.

The Witness: Irving E. Plaut.

Mr. Goldman: If your Honor please, I would like to state my name is Robert P. Goldman. I am a member of the firm of Paxten & Seasongood, attorneys of Cincinnati, who are attorneys for the John Shillito Company, of which Mr. Plaut is an employee. I am here simply as the personal attorney of Mr. Plaut. The Shillito Company is not a party to these proceedings, and is not appearing in any way.

Examiner Averill: I see. Delighted to have you, sir, and any assistance we can give you we extend to you with pleasure.

Mr. Goldman: Thank you.

Mr. Weisman: We shall be delighted to join in the extension of any courtesies to Mr. Goldman. I would like to have a statement from you, Mr. Goldman, whether or not this witness has been subpoenaed, or comes here voluntarily from Cincinnati to aid the Commission?

Irving E. Plaut-For Commission-Direct.

Mr. Goldman: The witness has been subpoenaed, sir.

Mr. Weisman: You have a subpoena?

Mr. Goldman': Yes.

Mr. Weisman: All right, sir, that will make the record complete.

(There was a discussion off the record.)

Examiner Averill: That discussion is off the record. The witness has given his name as Irving E. Plaut, Cincinnati, Ohio.

Direct examination by Mr. Martin.

10547

- Q. What is your residence, Mr. Plaut? A. Cincinnati, Ohio.
- Q. What is your occupation? A. Divisional merchandise manager, ready-to-wear.
- Q. For whom? A. John Shillito Company of Cincinnati, Ohio.

Examiner Averill: The name of that firm, please? The Witness: Shillito.

Examiner Averill: How do you spell that? The Witness: S-h-i-l-l-i-t-o.

By Mr. Martin.

- Q. How long have you been in the employ of John Shillito Company? A. Over three years.
- Q. Do you recall just when you went with them? A. Around July, 1933.
- Q. And have you occupied your present position at all times since you came in their employ? A. Yes.
- Q. Have you ever heard of an organization called the Fashion Originators Guild of America? A. I have.
- Q. Do you know whether or not at the time you entered the employ of the John Shillito Company, the Shillito

Company had signed a declaration of co-operation in antipiracy with the Fashion Originators Guild of America? A. I believe they had prior to my coming there.

- Q. What are your duties as divisional merchandise manager? A. Having a group of buyers under me in the ready-to-wear, and I supervised them, and most times go to the market with them.
- Q. Mr. Plaut, you have already testified that you entered the employ of the John Shillito Company in July, 1933. Now, since that time has the John Shillito Company cooperated with the Fashion Originators Guild of America in accordance with their signed declaration in anti-piracy? A: To the best of my knowledge, they have.

Q. I show you Commission's Exhibit 99-C, the last paragraph thereof; and ask you if since you have been in the employ of the John Shillito Company that stamp—that clause, rather, was placed on your orders for ready-to-wear garments? A. To the best of my knowledge, it has been put on every order.

Mr. Weisman: What did he refer to? Mr. Albert: 99-C.

By Mr. Martin.

Q. Now, Mr. Plaut, did the Guild shopper ever visit your store? A. She did.

Q. What was the name of the shopper in Cincinnati? A. There were two, but the one that has been there the longest time has been Mrs. Levy.

Q. Did she visit your store? A. Frequently.

- Q. All right, sir. Go ahead. What was the other one's name? A. I do not recall.
 - Q. But there was another? A. Prior to Mrs. Levy.
 - Q: Did the other one visit the store? A. Yes, sir.
- Q. Do you recall when it was that these shoppers visited your store?

Mr. Weisman: He has not testified that they visited the store co-jointly. In other words, it was seriatim, they had one shopper and then that shopper was discontinued, and they had another.

- Q. Do you recall when Mrs. Levy first visited your store? A. I do not recall the exact date.
 - Q. The year? A. During the year 1935.
- Q. Did the other shopper visit your store prior to that date? A. I believe she did.
- Q. Did the John Shillito Company, at the request of one shopper, or at the request of the Fashion Originators Guild, return garments which the John Shillito Company was advised were copies of garments registered by the Fashion Originators Guild members?

Mr. Weisman: I object to the form of that question. I object because counsel is leading this witness, and I think, in fact, that counsel has made an unconscious error in this matter because we have stipulated in this case that the only garments returned were garments that were ordered—were not garments, first, let me say, that were ordered returned, but were garments which had been prior thereto adjudged copies. Now, you are leading up to this question with the fact that they were garments returned merely because they were thereafter adjudged copies.

Mr. Martin: If the question is not plain I would like to have it be made plain.

Mr. Weisman: Adjudged copies of originals manufactured by the Fashion Originators Guild of America members.

Mr. Martin: I will take your amendment, because I think it makes it very exact.

10553

A. We co-operated with them, and we returned the copies.

By Mr. Martin.

- Q. Now, Mr. Plaut, do you know whether or not the John Shillito Company has ever been red carded? A. Yes.
- Q. Before I go to that, did you ever refuse to return garments which had been adjudicated or adjudged copies?

 A. What do you mean by that?
- Q. Which had been adjudged copies? A. Not to my knowledge, with the exception of having one when it was advertised and the shopper came in and happened to see it and we asked permission to hold it to cover the advertisement, which permission was granted.

.

- Q. Now, do you recall when it was that the John Shillito Company was red carded? A. I believe in the month of February.
- Q. What part of the month? A. Early part of February, if I am correct.
 - Q. February of what year? A. 1936.
- Q. How did that come to your attention? What was the first notice that you had? A. The first and only and final notice was when I saw it in "Women's Wear."
 - Q. You do not know? A. No.
- Q. Now, Mr. Plaut, at the time that the John Shillite Company was red carded, did you have any orders outstanding for goods, or for garments, rather, with manufacturers who were members of the Fashion Originators Guild of America? A. We did.

- Q. Do you recall who those members, or, rather, who those manufacturers were? A. Some of them I do.
 - Q. Will you name some of them? A. Witlin Schneider.
 - Q. All right. A. C. H. D. Robbins.
- Q. All right. A. If I can, I would like to refresh my memory. I have a memorandum.

10559

Q. All right, sir.

Examiner Averill: What was the name of the

The Witness: C. H. D. Robbins.

Examiner Averill: C. H. D. Robbinson?

The Witness: Yes, sir.

By Mr. Martin.

- Q. Next? A. Starr-Friedlander.
- Q. All right? A. Lyttle Brothers.
- Q. All right. A. E. N. Marcus.
 - Q. All right. A. Lewis Cohen.
 - Q. All right-

Mr. Weisman (interposing): Just a minute. I am trying to write these down. You see, you did not give me a list like you did, Mr. Martin, so I have to write them down, and I would like for you to go a little more slowly. You see, all Mr. Martin has to do is to check them off of his list. What was that last name again?

The Witness: E. N.—

o Mr. Weisman: E. M.?

The Witness: No, E. N. Marcus.

By Mr. Martin.

- Q. And the next? A. Lewis Cohen.
- Q. The next one? A. Parnes Levinson.
- Q. All right. A. Junior Guild.
- Q. All right. A. Aywon Dress.
- Q. All right. A. Joanne Junior.
- Q. Yes. A. Reich & Goldfarb.
- Q. Yes. A. Louise Mulligan.
- Q. Now, Mr. Plaut, what did you do when you found that your store had been red carded with reference to

seeing about orders which you had outstanding with manufacturers who were members of the Guild? A. We sent them all telegrams asking them when they were going to ship the merchandise because we were going to have a spring opening.

By Examiner Averill.

- Q. In that part of your answer in which you spoke of the spring opening, was that one of the things that you stated to the manufacturers in your telegram? A. Yes.
 - Q: It was? A. It was, your Honor.
- Q. And that telegram went out to the several manufacturers? A. It did, your Honor.

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10563

By Mr. Martin.

- Q. Now, Mr. Plaut, I hand you Commission's Exhibit 886 for Identification and ask you if you can identify that paper? A. I can.
- Q. What is it? A. A telegram sent to Starr-Friedlander on March 3.
 - Q. By whom? A. By me.
- Q. I show you Commission's Exhibit 887 for Identification and ask you if you can identify that? A. I can.
 - Q. What is that? A. "Regarding telegram"-
- Q. Do not say what is in it. Just say if you can identify it. A. Yes, I can.
- Q. What is it? A. It is an answer to the telegram we sent to manufacturers.
 - Q. Who is it from? A. This is from Starr-Friedlander.
 - Q. To whom? A. John Shillito Company.
 - Q. Where? A. Cincinnati.
 - Q. Ohio? A. Yes.
 - Q. Under what date? A March 3, 1936.
- Q. Was that received by you in answer to the telegrams which is marked Commission's Exhibit 886 for Identification? A. That is correct.

Mr. Martin: I offer these in evidence, your Honor.

Mr. Weisman: No objection.

Mr. Weisman: It will be stipulated by the respondent that similar telegrams were sent to Witlin & Schneider, Joanne Junior, Aywon Dress, Reich Goldfarb, Honnel Brothers, Louise Mulligan. It is also stipulated that a telegram was sent to C. H. D. Robbins and the reply was sent as follows: "Can make part shipment next week upon receipt of new Guild signed declaration." It is also stipulated that a similar telegram was sent to Louise Mulligan and a similar answer was received from Louise Mulligan. It is likewise stipulated that a telegram was sent to Junior Guild and a reply by Junior Guild and a like answer was received.

Mr. Martin: It is further stipulated that a similar telegram was sent to Lewis Cohen Company and a similar answer received from them.

Mr. Weisman: Well, I cannot—this answer is a little different.

Mr. Martin: Do you want to put that in?

Mr. Weisman: Yes.

Examiner Averill: Can you not make your difference in your stipulation?

Mr. Weisman: Yes. And that the letter—the notice to Lewis Cohen, was answered by a letter from Lewis Cohen, acknowledging receipt of the telegram, and stating: "We have been advised by our attorneys that a repudiation of your signed declaration of co-operation constitutes a breach of your basic agreement with the Fashion Originators Guild of which we are a member, and therefore with us, and they were justified in refusing to show

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merchandise to you based upon such repudiation until such time as you enter into a new agreement with the Guild and its members."

By Mr. Martin.

Q. Now, Mr. Plaut, when you received these replies from the F.O.G.A. members stating that they could not fill your orders, what did you do next? A. I left for New York that afternoon with our dress buyer, Mr. Fishel.

Q. Well, what did you do when you got to New York?

A. When I got to New York, went to the dress houses with

Mr. Fishel, and Mr. Rosensweig, and asked them about the

merchandise that they owed us.

Examiner Averill: When you say the "dress houses," do you mean those houses located in New York to whom you had sent telegrams?

The Witness: Yes, your Honor.

Examiner Averill: Rather than other people.

By Mr. Martin.

Q. Did you call on C. H. D. Robbins? A. We did.

Q. V. ho did you see there? A. I would like to have permission to refresh my memory—

Q. Certainly, go ahead. A. About the-

Mr. Weisman (interposing): Wait a moment. Let us hear what he wants to refresh his memory from.

The Witness: To refresh my memory on interviews we had with these manufacturers.

By Mr. Martin.

Q. Do you have anything there that will refresh you, notes?

Mr. Weisman: What have you got? Did you make notes at the time?

The Witness: Yes, sir.

(Witness withdraws paper from pocket and refers to same.)

Mr. Feldman: At that time?

Mr. Weisman: At that time?

The Witness: In their showrooms.

Mr. Weisman: All right.

By Mr. Martin.

Q. Who did you see at Robbins? A. Mr. Joe Lagowitz and Mr. Nate Hyman.

Q. Well, what did they tell you? A. I asked Mr. Lagowitz, "How are our orders coming along?" Mr. Lagowitz said, "All of your dresses are in work, and will be ready next week." I said, "Fine, and then will you ship about the middle of the week?" Mr. Lagowitz: "No, you know we cannot ship a dress until you are signed up with the Guild."

I said, "Can we see the goods which you owe us?" Mr. Lagowitz: "You know exactly what you bought." I said, "Will you ship us these goods in any way, shape, or form? In other words, "ship through someone else?" Mr. Lagowitz: "We will not ship anything to you either directly or through anyone else until and unless you sign up with the Guild."

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I said, "But after all at the time that we purchased this merchandise there was nothing to prevent you from showing, selling, or shipping to us."

Mr. Lagowitz said, "That's right, but you knew at that time that we were not showing or shipping to White's." I said, "What has White's got to do with Shillito's? We were not red carded, and the order was placed by us and accepted by you in good faith."

Mr. Lagowitz said, "I am sorry, but there is nothing we can do for you." I said, "Will other Cincinnati stores have your merchandise?" Mr. Lagowitz said, "Yes, they have already received their merchandise." I said, "When you wired me you referred to the new Guild declaration." Mr. Lagowitz said, "Yes." I said, "And this declaration reads substantially as the first except that it carries a stronger enforcement clause." Mr. Lagowitz said, "Right." "Mr. Plaut: Do you realize"-I withdraw that. I said, "Do you realize that by our adherence to the Guild program we would be chasing our customers into chain stores like Lerner's, Grayson's, and Mangle's, and others whom the Guild cannot control and who are all stocked up with Guild copies?" Mr. Lagowitz said, "We suggest that you comply with the Guild. With the help of Shillito's and all other stores the Guild can stop Lerner's." I said, "Have we ever copied any of your dresses?" Mr. Lagowitz said, "I don't know."

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Mr. Fishel said, "Neither we nor you knew anything about this matter turning up at the time the purchases were made, so I cannot see how you can make it retroactive to apply to back orders."

Mr. Lagowitz said, "I myself elect not to ship any back orders to you; I am acting entirely on my own." During the

Q. Now, what happened-

Mr. Weisman (interposing): Let him finish.

10575

A. During the course -

By Mr. Martin.

Q. All right. A. —of the conversation, a model came over to show a few style. Mr. Lagowitz said to the girl, "Don't show here." Mr. Lagowitz also streed that thirty-seven dresses were reordered by Maybelle and reorders were also received from Pogue's.

- Q. Now, Mr. Plaut, who is Mr. Lagowitz? A. To my knowledge, Mr. Lagowitz is a member of C. H. D. Robbins.
 - Q. A member of the firm? A. Member of the firm.
- Q. Who are those other two firms, Maybelle and Pogue's? A. Both stores are in Cincinnati.
 - Q. Retail department stores? A. Retail stores.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

By Mr. Martin.

Q. Mr. Plaut, there is a reference in your testimony that Mr. Lagowitz told you that you knew at the time that they were not shipping to White's; what was he referring to there? A. At the time that we purchased the goods from C. H. D. Robbins, White's were in the showroom at the same time that I was.

Q. Now, just who—what White's? A. R. H. White's of Boston.

Examiner Averill: I see.

By Mr. Martin.

Q. Is that a retail department store? A. Retail department store, and, to my knowledge, White's were already red carded and we were not.

10578

Q. All right, sir.

Examiner Averill: Is that a Cincinnati concern? The Witness: No, R. H. White is of Boston.

By Mr. Martin.

- Q. Is White's a member of the A.M.C. group? A. Yes, that is right.
- Q. After you left Robbins', where did you go then? A. To Witlin & Schneider.

- Q. Well, who did you see there? A. Mr. Witlin and Mr. Al Marks.
- Q. Who was with you—who went with you? A. Mr. Fishel and Mr. Rosensweig.
- Q. Well, what did Witlin & Schneider tell you? A. When we arrived Mr. Marks was busy waiting on customers. Models were displaying goods, and were not told not to show us. We took numbers of the display dresses. Mr. Marks spoke to Mr. Plaut and told him that although they were more than anxious to co-operate, his hands were tied. He suggested that Mr. Plaut return—
- Q. Referring to you, he suggested that you— A. Yes, return along later that day and discuss the matter personally with Mr. Witlin. He mentioned during the conversation that Pogue's ordered 120 dresses, and Horne's beught 150.
- Q. Well, did you go back to see him? A. I returned to Witlin & Schneider later in the afternoon alone and spoke to Mr. Witlin, and he later stated he would do nothing—he would do everything in his power to ship merchandise to us, but that in view of the Guild's restrictions he did not see how he could do it.
- Q. Did you go to see anybody else? A. Louise Mulligan.
- Q. Who went with you? A. Mr. Rosensweig and my-self.
 - Q. Who did you see there? A. Mr. John Irwin.
- Q. Who is Mr. John Irwin? A. I am not sure if he is a partner of that concern or not, but as far as we were concerned we always had our dealings with Mr. Irwin.
- Q. All right, Sir. A. They are a Chicago concern, but they were showing their goods at the New Yorker Hotel.
- Q. All right, sir, what did they tell you? A. I said to. Mr. Irwin, "How do we stand with your firm? Mr. Irwin said, "I am sorry, but we know we cannot do anything. I am terribly upset about the whole thing. I only wish

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there would be something I could do, but we are not permitted to show or ship you any new goods." I said, "Do you owe us any goods?" Mr. Irwin said, "I think we shipped you everything on back order. If there is still anything on back order we will ship it unless we are instructed to the contrary."

Q. What else did he tell you? A. "Instructions were issued to all Chicago firms not to ship any merchandise whether on back order or otherwise."

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Examiner Averill: You mean he told you that? The Witness: That is right; have a note. (Witness refers to notes.) Mr. Irwin said, "There is one thing"—Mr. Irwin said, "There is one thing I will say, you know we can confine our line to one store in the town even though we are not permitted to ship red carded stores, we are not going after any other accounts in those cities."

By Mr. Martin.

- Q. Who else did you go to see? A. Junior Guild.
- , Q. Who went with you there? A. Mr. Rosensweig.
- Q. Who did you see there? A. Mr. Harry Cohen, representing Junior Guild, which is their salesman.
- Q. All right, what did they tell you? A. I said to Mr. Cohen: "What are you doing about the merchandise you owe us?" Mr. Cohen said: "Originally we shipped all back orders and reorders on numbers you have already had in stock, but yesterday I received this wire."
 - Q. Did he show you the wire? A. Showed me the wire. "We can neither ship nor show to red carded stores (witness reading from paper). Shows wire reading as follows, 'Mr. Harry Cohen, Room 821, Hotel New Yorker, New York: Absolutely cannot accept any orders from red carded accounts.' A. O. Gilder."

- Q. What else did he tell you? A. Mr. Cohen said: "At the beginning of this controversy all Chicago manufacturers met with the approval of their attorneys. They decided to ship back orders and reorders. However, now that instructions from the Guild were issued to the effect that we are not permitted to ship any more we have to abide by their instructions. I will say that this controversy is interfering with business from this room to the extent of fully 25 per cent. However, I look for a quick settlement and, therefore, we are not soliciting new business in your town."
 - Q. Is Junior Guild a Chicago house? A. Yes, sir.
 - Q. All right, who next did you see? A. Joanne Junior.
- Q. Who did you see there? A. Mr. Martin Zinn and Mr. Rosensweig was with me.
- Q. Who was Mr. Martin Zinn? A. One of the partners of Joanne Junior.
- Q. All right. What did they tell you? A. I said, "Mr. Zinn, what are you doing about our back orders and reorders?" Mr. Zinn said, "I wish I could do some thing. I am just about at my wit's end. You know I have always co-operated with the A.M.C. since the first day I have been in business, and they have always worked with me, but there is nothing I can do about it.

Examiner Averill: Who are they?

The Witness: A.M.C.

Examiner Averill: Oh, yes, I know.

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A. (Resumed) Mr. Zinn said, "I have been to see Mr. Golby of the Guild several times in an effort to arrive at some solution for my firm, but he has always been very abrupt, had little time to speak to me, and told me not to worry that this mess would be over in a few days; but he is not telling me how to cover my expense on loss of the A.M.C. business. (Witness continuing to refer to paper.) "Mr. Plaut pointed to some suits"—

- Q. All right, sir. A. (Witness again refers to paper) I, pointing to some suits: "You know I can use at least fifty of those suits." Mr. Zinn said, "I know it, I can book at least 300 from the A.M.C. to-day, but I am afraid of the Guild. You know, if they penalize me they can prevent me from obtaining any piece goods, and that would just about ruin the firm."
- Q. All right. Did you go to see anybody else? A: Frank Starr-Friedlander.
 - Q. Who was with you? A. Mr. Rosensweig.
 - Q. Who did you see there? A. Mr. Frank Starr.
 - Q. Anybody else? A. And Mr. S. Friedlander.

10589

- Q. All right. What did they tell you? A. I said, "How about the goods we have on orders?" Mr. Friedlander said, "We cannot ship or show to you. After all, you realize we are subject to a fine and punishment by the Guild. I said, "But didn't we place these orders prior to this controversy?" Mr. Starr said, "Yes, but we cannot do a thing. One mistake the Guild made was to prohibit shipments of back orders. They should have permitted us to ship all merchandise on order, then if they wanted to do so could have red carded your account and we would have refused to ship you any new merchandise, but as matters now stand we cannot ship you a dress until the Guild tells us to do so."
- Q. All right. Where did you go next? A. To Lewis Cohen.

- Q. Who went with you there? A. Mr. Rosensweig.
- Q. Who did you see there? A. Miss Corelli.
- Q. Who is she? A. From what she told me, she was interested in the concern.
- Q. All right, what did she tell you? A. I said, "How about some dresses from you?" Miss Corelli said, "We wish we could ship to you, but we cannot do a thing. The red card prevents our doing so. It really is too bad, because I don't know when we ever had a better line than

we have now, and it is certainly a shame that I cannot ship you the goods that you bought, or show you any of the new things.

Examiner Averill: Then you had back orders?

The Witness: Yes, your Honor.

Mr. Martin: Had orders with all of these places, your Honor.

Examiner Averill: I see.

A. (Resumed) It now seems to be a question of dog eat dog. I said, "Yes, but we bought these goods before anything turned up, and, after all, a contract is a contract, and an order is a contract." Miss Corelli said, "I know, but it can't be helped. I blame the A.M.C. for not receiving the back orders." "Miss Corelli, it seems that they threatened to make a football of all the garments they received from Guild houses, and that is why the Guild stopped shipments on all back orders."

Mr. Weisman: Who said that? The Witness: Miss Corelli.

By Mr. Martin.

Q. Who did you go to see next?

Mr. Weisman: Have you got a copy of what he is reading there, Mr. Martin? I notice you quoted. Have you got a copy of what he is reading?

Mr. Martin: What business is it of yours?

Mr. Weisman: I want to know if you are quoting him correctly.

Mr. Martin: I am not quoting him at all. I am going to ask him a question.

Mr. Weisman: You just quoted him.

10502

By Mr. Martin.

- Q. Who did you go to see next? A. Reich & Goldfarb.
- Q. Who went with you there? A. Mr. Rosensweig.
- Q. Who did you see there? A. Mr. Reich, Mr. Goldfarb and Mr. Grettinger.
- Q. All right, what did they tell you? A. I said, "What about our goods on order?" Mr. Reich said, "I don't know what to do, I can't ship to you because of the Guild instructions. I will do anything in the world to be able to ship, but I am afraid of the consequences. You see, it is not only the 5,000 of the fine, but it is the silks, the Guild silk people will refuse to ship me, and then where am I? I only wish I knew how to get out of the Guild. About six months ago I resigned, and then I let them talk me into getting back again. Now, I tried to resign, and I can't do so. I only wish I had stayed out when I was out." I said, "Can we see any of your new things?" Mr. Reich said, "You know we can't do that."

Q. Were any of these orders which you had outstanding with Guild manufacturers filled—were any of these orders which you had outstanding with Guild manufacturers, at the time you were red carded, were any of them subsequently filled by the manufacturers? A. They were not.

Mr. Martin: That is all.

Examiner Averill: Will you tell me, before you go any further, what this reference to A. O. Gilder is?

The Witness: He is the owner of Junior Guild of Chicago.

(Witness folds paper and makes motion to place same in pocket.)

Mr. Weisman: Do not put that away.

The Witness: Mr. Gilder signed that telegram, Judge; he is the owner of that firm.

Examiner Averill: Yes.

10595

Cross-examination by Mr. Weisman.

- Q. You just read off a little resume, did you not? A. That is right.
- Q. And you put that resume back in your pocket, did you not? A. That is right.
- Q. Now, will you please take it out of your pocket and put it on the table in front of you? Will you?

Mr. Martin: Your Honor please, I object to that. Examiner Averill: No, there is nothing unusual about that.

Mr. Martin: All right, sir.

- Examiner Averill: He has a perfect right to do 10598

: (Witness removes paper from pocket.)

By Mr. Weisman.

Q. Now, before you came to court that resume was prepared, was it not? A. It was prepared.

Q. By whom was it prepared? A. By Mr. Rosensweig and myself.

Q. When was that paper prepared? A. March 4, 1936.

Q. Who told you to prepare it? A. On the advice of, our counsel.

Q. Who was your counsel who told you to prepare it? A. Mr. Bob Goldman.

Q. The gentleman who appeared in court to day? A. 10599 Yes.

Q. How many copies of it did you prepare? A. I cannot recall.

Q: More than one? A. More than one.

Q. Well, are you certain that it was more than one copy of that? A. Yes, sir.

Q. Is that in the form that you prepared it on March 4? A. My-

- Q. Or did you first draw a draft of it and then correct it, after your lawyer had seen it? A. The lawyer did not see it until we wrote this all up on March 4 in New York City.
- Q. Well, was that written up in New York City? A. That is right,
- Q. Well, who told you—was Mr. Goldman in New York City with you? A. He was not.
- Q. Well, did you not tell me a moment ago that you prepared that at the request of your attorney, or at his direction? A. That is right.
- Q. Well, what did you do, call him up on the long-distance phone? A. No, before I left Cincinnati.
- Q. Well, let us see, then, before you left Cincinnati your attorney told you that you should go in and see these people and make a record of what they said and what you said? A. That is right.
 - Q. Is that correct? A. Yes.
 - Q. Now, how long were you in New York?

Mr. Makin: That is objected to as immaterial. Mr. Weisman: Oh, no.

Examiner Averill: He may inquire; he has the right to attack—

Mr. Weisman (interposing): —the credibility. Examiner Averill: —the weight or credibility of the witness' statement.

Mr. Martin: All right.

Examiner Averill: Go ahead.

Mr. Martin: I have no particular objection; go ahead.

By Mr. Weisman.

Q. How long were you in New York? A. I believe four or five days.

10601

-10602

- Q. When did you leave for New York from Cincinnati? A. March 3.
- Q. Then, when did you prepare this, at the close of your visit, or during your visit, or before your visit commenced?

 A. Going into each manufacturer, we closed it, as we were in the showroom, or outside the showroom, individually.
- Q. Well, you did not walk around with a typewriter in your hand, did you? A. No, we did not.
 - Q. You made notes, did you not? A. Yes, that is right.
 - Q. Have you got these notes? A. No, I have not.
- Q. When you were in New York, you made this up in New York in its present form—you have just stated that; is that not so? A. This is the substance of our interviews with these manufacturers.

10601

- Q. Do you not understand English? Did you not understand my question?
 - Mr. Martin: I object; the witness answered the question.

Examiner Averill: One moment, just one moment. I will look out to see that the witness is protected. Read the question.

(Last question read.)

Examiner Averill: The question is, is this in its present form?

Mr. Weisman: The question is-

Examiner Averill: Read the question again.

(Previous question read as follows: "Q. Now, when you were in New York, you made this up in New York in its present form—you have just stated that, is that not so?")

Examiner Averill: No, he did not state that.

By Mr. Weisman.

Q. Wel', did you not?

Examiner Averill: He stated clearly that he made the memorandum either in the showroom or

before they left the merchandising house, or wherever it was they had the interviews. That later in the day, or evening, then he read it over and prepared this paper.

Mr. Weisman: That is right.

* Examiner Averill: Which was later reduced to typewritten form.

Mr. Weisman: Yes.

Examiner Averill: That is his testimony.

Mr. Weisman: That is what I want.

By Mr. Weisman.

10607

Q. And that was done in New York? A. That is right.

Q. And that was done ultimately in New York in the form you have it before you; is that not so? A. Make that question clear?

Mr. Weisman: May I mark this for identification (having reference to the paper that the witness has been reading from)?

(Witness draws paper closer to himself.)

Mr. Weisman: You are not afraid that I will mark it for identification?

The Witness: No.

- Mr. Weisman: Will your Honor direct him to have it marked?

Examiner Averill: I do not know what you are trying to do. I do not understand the procedure.

Mr. Weisman: I want to mark this for identification so that I may refer to it, so that he may not—

Examiner Averill: Let me see this paper. What is all this after? I do not know. I do not see what it is leading up to. As I understand, gentlemen, the witness has stated very clearly about this thing; of course, this particular writing

here was not done in the stores where he went or the showrooms, or whatever they were where he went to see the different people with whom he had placed orders for goods, but either were made, I presume, either by pencil or by some kind of memoranda——

The Witness: That is right.

By Examiner Averill.

Q. Suppose I ask you a few questions about that. These were made up from pencil memoranda, or data, which later, when you went to the hotel— A. To the A.M.C. office.

10610

- Q. The A.M.C. office? A. A.M.C. office.
- Q. Were prepared then? A. Yes, sir.
- Q. It was there reduced to a typewritten form? A. Yes, sir.
- Q. This which you have is the typewritten form in which it was prepared by you, which was finally delivered to you after you had finished reducing your notes to writing? A. After they were reduced to writing.

Examiner Averill: It seems to me that there is no trouble there. I think the thing is now beginning to clear up very nicely, Mr. Weisman.

Mr. Weisman There is no trouble. I simply want to get the facts.

10611

By Mr. Weisman.

Q. Mr. Plaut, as a matter of fact, was not that statement that you have read from prepared in the office of the A.M.C.? A. Yes, sir.

Examiner Averill: He said so.

The Witness: This is the one that we made up when we came back from the manufacturers.

By Mr. Weisman.

Q. What was the necessity of preparing it in the A.M.C.?

Mr. Martin: I object to that as entirely immaterial.

Mr. Weisman: Let us see whether it was or not. Mr. Martin: The witness has testified that his store was a member of the A.M.C., and it was made up in the A.M.C. office.

Examiner Averill: I know, but he may have a very simple explanation for that.

Mr. Weisman: Let us find out what the explanation is, your Honor.

Examiner Averill: He can state why he went there instead of going somewhere else.

Mr. Martin: Naturally he would go to his own office.

Mr. Weisman: After you have so kindly prompted the witness, let us see what he has to say.

A. Mr. Rosensweig and Mr. Fishel were both connected with the A.M.C. office and that is why it was prepared there.

By Mr. Weisman.

10614

- Q. Did you not say that Mr. Rosensweig and Mr. Fishel came to New York with you? A. Mr. Fishel only.
 - Q. Only? A. Only.
- Q. What is Mr. Fishel's connection with your store—Mr. Fishel only is connected with your store, I believe you said? A. That is right.
- Q. What did you mean when you said he was connected with the A.M.C.? A. The A.M.C. is the—the John Shillito Company is in the A.M.C. office. That is their office.

Q. What hotel did you stop at? \

Mr. Martin: I object to that as immaterial. Examiner Averill: Overruled. He has the right to find that out.

By Mr. Weisman.

- Q. Answer. A: The New Yorker Hotel.
- Q. Hotel New Yorker? A. Yes.
- Q. You say you got here about March 4? A. Yes.
- Q. Did you register in your own name? A: Yes.
- Q. With whom? A. Alone.
- Q. Why did you not register with Mr. Fishel? Did you?

10616

- Q. Why? A. He did not stop at that hotel.
- Q. What did you do with the notes from which you made up this paper; from which you read on your direct examination?

Mr. Martin: He has not testified that he made up this paper.

Examiner Averill: Let us not get too technical about that. Let us get the facts. Let us get the testimony. I think the testimony is very clear on that point now. I will let him answer that question. Objection overruled; exception noted. Read the question.

(Question read.)

Examiner Averill: How long was that afterwards?

10617

The Witness: The same day.

By Mr. Weisman.

- Q. Answer the question, please. A. What is the question?
- Q. (Question read.) A. Mr. Rosensweig made up the notes and I did not.

Q. Then I understand that you have this paper from which you have read—it is a paper which has been made up from notes which you did not make up at all, and which you did not have at all, but that Mr. Rosensweig made up; is that so?

Examiner Averill: No, which he did not make up; who did make them up?

The Witness: Mr. Rosensweig.

By Mr. Weisman.

Q. Mr. Rosensweig? A. Mr. Rosensweig.

Q. You are absolutely certain of that? A. Well.

10619 Q. Are you? A. Well.

Q. Can you answer the question? A. I would like to have the question repeated.

(Question read.)

Mr. Weisman: That is all the answer that I want to know.

The Witness: I did not give you an answer. I have not given you an answer yet.

Examiner Averill: Read the question.

Mr. Weisman: I would like to have the question read, and also my question and the answer you gave, and the following question and the answer you gave down to where you were asked if you were absolutely certain of that.

(The questions and answers referred to were read)

Examiner Averill: Is that clear?

The Witness: It is not clear.

By Mr. Weisman.

Q. Well, I will try to make the question clear with you. You have just stated a moment ago, have you not, that the

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matter appearing on this paper from which you read was made up from notes which had been made up by Mr. Rosensweig; is that so? A. That is so.

Q. So that it now appears that you did not make up the notes at all and Mr. Rosensweig made them up? A. He wrote down the notes.

By Mr. Weisman.

- Q. Now, let me ask you a simple question. You say you were in New York for five days? A. Four or five days.
 - Q. Four or five days? A. Yes.
- Q. During these four or five days you visited these various manufacturers concerning which you have testified; is that correct? A. On March 4.

10622

Examiner Averill: You testified that you did that on March 4?

The Witness: Yes.

By Mr. Weisman.

Q. You visited all these people in one day? A. Yes.

Q. What time did you get into New York City? A. Around 8.15 or 8.30.

Q. These people that you have testified you visited, you visited them all in one day, that day? A. That is correct.

Q. After visiting them I want you to just try to give us the picture of what you did; correct me if I am incorrect: You went into the showroom and you saw them and you had certain conferences with them; is that correct? A. That is correct.

- Q. Now, after you had those conferences you did not make these notes that you had in the presence of these people, did you? A. One house.
 - Q. Which house? A. C. H. D. Robbins.
 - Q. C. H. D. Robbins? A. Right in the showroom.

- Q. As to the others, did you man them outside? A. Outside their showroom waiting for the elevator.
 - Q. Waiting for the elevator? A. Yes.
- Q. You did not write all of it in each case; did you? A. No. Mr. Rosensweig did all the writing, I—
- Q. And you, we will say, did the prompting? A. We were all there at one time.
- Q. You said that Mr. Rosensweig did the writing; what did you do? A. I did the talking as these interviews took place in the showrooms.
- Q. No, no, no, I mean what did you do while you were waiting for the elevator while you and Mr. Rosensweig were there, and while Mr. Rosensweig was writing up these notes? A. The conversation we had in the showroom.
 - Q. You reviewed it with him? A. Correct.
 - Q. Right? A. Right.
- Q. You yourself did not make a single note? A. That is correct.
 - Q. There can be no question of that? A. No.
 - Q. No question? A. No.
 - Q. Why did you hesitate so long? A. That is correct.
- Q. Why did you go to the A.M.C. to transcribe those notes into their present form. First, what time did you go there? A. What is the question?
- Q. What time, first, did you go to the A.M.C. to transcribe these notes into their present form as they appear here? A. Around 4 o'clock in the afternoon.
- Q. Whom did you see there? A. I was just with Mr. Rosensweig.
- Q. Did you see anybody else when you wrote them up?

 A. I did not:
 - Q. Did anybody else aid or assist you? A. No.
- Q. You gave it to a stenographer there? A. Mr. Rosensweig dictated to a stenographer.

- Q. From what? A. From the memorandums that he made.
 - Q. And then you left the A.M.C.? A. Yes.
- Q. Did you talk to anybody that afternoon? A. I cannot recall.
- Q. Try to fix your memory of this a little bit, tax it as far as you safely may and see whether or not you can recall talking either to Mr. Bergdahl or to Col. Reilly that afternoon. A. None whatsoever.
- Q. You mean you cannot recall it, or that you did not talk to them, or that you do r t remember; which is it, or what is it? A. I do not remember talking to anyone but Mr. Rosensweig the balance of that afternoon.
- Q. When did you go back, yourself, from the A.M.C. office and get this? In other words, when did you get this memoranda back from the A.M.C. office? A. I got it back from Mr. Rosensweig, I believe at the latest the next morning, March 5.
 - Q. What time? A. Some time during that morning.
 - Q. Where did you see him? A. At the A.M.C. office,
- Q. Did you meet him there by appointment? A. No, he is employed there.
- Q. How many copies did he give you? A. I do not re-
 - Q. No? A. I do not recall.
 - Q. More than one? A. I do not recall.
- Q. Well, you know that you gave one of them to your lawyer, do you not know that? A. I still cannot recall 10629 how many copies were made.

Q. I did not ask you how many copies were made. A. No?

- Q. You listen to my question. A. O.K.
- Q. I asked you how many copies he gave you? A. I do not recall.
- Q. I asked you whether he gave you more than one. Do you recall that? A. I do not recall that.

Irving E. Plant-For Commission-Cross.

- Q. Well, now, when you got it back did you read it?
 A. I did.
 - Q. When did you read it? A. The morning of March 5.
 - Q. Where? A. At the A.M.C. office.
 - Q: Who was present then? A. To the best of my knowledge, Mr. Rosensweig.
- Q. Then, what did you do with the copies there that he gave you? A. I took it back to Cincinnati with me that week.
- Q. When did you first show it to Mr. Goldman? A. To the best of my knowledge, the time I arrived back, the very day I arrived back in Cincinnati, Ohio.
- 10631 Q. What day did you get back to Cincinnati, Ohio? A. I usually get back on a Saturday of the same week.
 - Q. Offhand, can you recall as to this particular Saturday? A. No.
 - Q. No? A. No.
 - Q. So this particular occasion you do not know whether it was on a Saturday? A. I do not recall.
 - Q. Were you in New York over a week-end?

Examiner Averill: You mean on that occasion?

By Mr. Weisman.

- Q. On this occasion were you in New York over the week-end? A. I would not know.
- Q. Did you not state—are you certain you did not stay 10632 in New York over Saturday and Sunday? A. I do not recall, but I am quite sure I have not.
 - Q: What makes you sure you have not? 'A. Because I know in over three years working in Cincinnati on trips to New York I am yet to spend more than two or three weeks—two or three week-ends in New York.
 - Q. And this was not one of them? A. I doubt it very much.
 - Q. On this occasion? A. No.

- Q. Was it not a fact that March 4 was on a Wednesday, and with that knowledge would that change your opinion as to whether or not you spent that week end in New York City? A. I doubt it very much.
- Q. Would it change your opinion as to whether or not you were in New York four or five days? A. I said about four or five days.
- Q. About? A. About.
- Q. When you say about four or five days, do you mean about two or three days? A. It may have been, it may develop to be that.
- Q. What do you mean by our or five days, then? A. It may develop that we spent only two or three days on that trip.

10634

Q. When you testified under oath

Mr. Weisman: By the way, has this witness been sworn?

Examiner Averill: Yes.

By Mr. Weisman.

Q. When you testify under oath, when you mean two or three days you say four or five days; is that correct? A. To the best of my knowledge, as I can recall now.

Q. Now on this trip you learned all about the difficulty between the A.M.C. and the F.O.G.A., did you?

Mr. Martin: I object to that as not proper cross: examination.

10635

Examiner Averill: If the question was not so all-embracing I think I would allow it.

Mr. Weisman: I will withdraw it and I will make it more specific. I will ask this question now:

By Mr. Weisman.

Q. When did you first tell Mr. Bergdahl that you had —if you did tell Mr. Bergdahl—about you having been red carded?

Mr. Martin: I object. Improper cross-examination. There is no testimony in the record that he ever told Mr. Bergdahl that he had been red carded.

Mr. Weisman: Very well. I will ask the question in another way.

By Mr. Weisman.

Q. Did you ever tell Mr. Bergdahl about this little dossier that you had written up on the day that you came into New York? I will ask you that first,

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Mr. Martin: I object as incompetent, immaterial, and irrelevant, and having no bearing on the issues in this case, and improper cross examination. Certainly, that has nothing to do with the previous question which was about red carding, and now he is going to something else and it is even more improper.

Mr. Weisman: I think it is quite proper,

Examiner Averill: No, I think he has a right to ask that. He says he has been in the A.M.C. office, and I think he has a right to ask him what he told Mr. Bergdahl, and why.

Mr. Martin: All right, sir.

By Mr. Weisman.

Q. Did you? A. I do not remember.

10638

^o Q. Well, cogitate about it for a moment and see whether or not you can remember after thinking a moment or two very hard.

Mr. Martin: I suggest that the witness has answered the question. He said that he does not remember.

Examiner Averill: I will let him answer the question. I do not see any harm in having him

pause for a moment to consider the matter a little further.

Mr. Martin: I have no objection if he did or did not show it to Mr. Bergdahl, but I want to speed this thing up.

Mr. Weisman: You could not possibly do that.

By Mr. Weisman.

- Q. Answer the question. A. I still do not remember.
 - Q. You still do not remember? A. No.
- Q. Do you remember whether you showed that to the august personage, more other than Col. Reilly? A. I did not.

10640

- Q. You remember clearly that you did not show it to him, do you? A. Also to Mr. Bergdahl.
- Q. What makes it now so clear when only a moment ago you did not recall? A. What is that?
- Q. What makes it now clear? Only a moment ago you said you did not know whether you showed it to Bergdahl or not, and also that you say now you are quite positive you did not show it to Col. Reilly when just a moment ago before this question you said you could not remember; in other words, what suddenly called it up to your recollection that you had not shown it to Mr. Bergdahl? A. I saw Mr. Bergdahl more often than I saw Col. Reilly. I did not see Mr. Col. Reilly more than once in three months, and when I am in New York I see Mr. Bergdahl every day I am in the office.

- Q. While you were in the office three or four times because you were in the office three or four days that you were in New York, were you not? A. I did not catch your question:
- Q. You were in that office three or four times that week, were you not? A. I believe that is correct.
- Q. You were there on very important matters, were you not? Is that so? A. I was there trying to get goods.

- Q. Was the getting of goods unimportant to you? A. We wanted the goods.
- Q. Was it in your mind important or unimportant for you to get the goods?

Examiner Averill: Just answer the question, Mr. Witness. You know whether it was important or whether it was not to you; there is no sinister implication in that.

A. All right. It was important to get the goods.

By Mr. Weisman. .

10643

- Q. Why did you not say so in the first place? You do not choose to answer that? A. No.
- Q. You knew, did you not, that these goods were being held up because of controversy between the A.M.C., or, rather, to which the A.M.C. and the Fashion Originators Guild were parties, did you not? A. I knew about it.
- Q. What did you know about this controversy? Tell us about it. A. That we were red carded, and being one of the A.M.C. stores, and that is about all I knew.
- Q. I did not ask you how you came to know about it, but you said you knew there was a controversy between the A.M.C. and the Fashion Originators Guild of America; is that correct? A. That is right.

Q. You are divisional merchandise manager of John 10644 Shillito & Company? A. Yes.

Q. Is that so? A. Yes.

- Q. That means in large degree you are responsible for all the merchandise in your division; is that so? A. That is so.
 - Q. What? A. That is so.
- Q. Now, as divisional merchandise manager, and I assume your division was the ladies' ready-to-wear division, did you not know what were the conditions that had arisen,

and the differences that had come up between the Fashion Originators Guild of America, and the A.M.C.? A. I do not recall. .

Q. I did not ask you if you recalled it. I asked you did you then know that? A. I knew about the controversy that was then going on.

Q. You knew there was a controversy? A. I knew there was a controversy.

Q. Did you know what was the subject matter of the controversy? A. No.

Q. No? H. No.

Q. You came on to New York and you spent your time, and you were at least once a day in the office of the A.M.C.; 10646 is that so? A. That is right.

Q. And you knew Mr. Bergdahl; is that so? A. That is right.

Q. You were worried about now getting your goods, in that so? A. Yes, sir.

Q. In this whole time that you were in New York did you ever say to Mr. Bergdahl, in words or in substance, "What is this quarrel between the A.M.C. and the Fashion Originators Guild of America?" Did you ever ask him that? A. I did not.

Q. Were you not interested in finding out?

(Whereupon, at 3.50 o'clock P. M., November 18, 1936, the hearing in the above-entitled matter was adjourned.)

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10650

Irving E. Plaut-For Commission-Cross.

Room 901, 45 Broadway, New York, New York, November 19, 1936.

Met, pursuant to adjournment, 10 o'clock A. M. Before: EDWARD M. AVERILL, Examiner.

(Same Appearances.)

PROCEEDINGS.

Mr. Weisman: Shall we proceed, Judge?

Examiner Averill: Gentlemen, whenever you are ready you may proceed. This gentleman was on the stand at the time that we adjourned.

IRVING E. PLAUT resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Vieisman.

Q. Mr. Plaut, you came with the John Shillito Company in 1933? A. That is correct,

Q. What had you done before that? A. Before I was connected with John Shillito Company?

Q. Yes. A. Is that the question?

Q. Yes. A. I was with Joske Brothers in San Antonio.

Q. And in what capacity? A. Ready-to-wear.

Q. I did not say what field. I assume it was the readyto-wear field. In what capacity were you with that last named concern? A. Buyer of dresses, coats and suits.

Mr. Weisman: I paraphrased the wording used; he said "in accordance with."

Examiner Averill: No, no.

Mr. Weisman: To me when a man says "I did something in accordance with the contract," that means I fully complied with the terms as the contract provided.

Examiner Averill: You call it a contract, it is not a contract, either.

Mr. Weisman: A declaration of co-operation, I accept the correction. And I think I am entitled to know what he is talking about, what his experiences are, what he knows about the ready-to-wear, whether or not he was justified in his direct statement, in saying that he performed in accordance therewith.

Examiner Averill: I cannot agree with you, sir. I do not think the witness has been qualified so far, and certainly has not been questioned along an expert line at all. He has only been questioned in regard to certain facts in connection with the subject of his examination, and I do not think that his past experiences are relevant at this time.

Mr. Weisman: I will accept the ruling of the Court.

Examiner Averill: I wish you would desist from that.

Mr. Weisman: All right.

By Mr. Weisman.

Q. As divisional merchandise manager of Shilito, or Shillito, what were your duties? A. As I explained that to you yesterday, gave you the answer on that.

Q. Now, will you please answer my question? Do you not know to day? A. I do.

Q. Well, tell us. A. I told you I had a group of buyers, merchandise them at home, go into the market with them frequently, work with them on their advertising.

10652

Irving E. Plaut-For Commission-Cross.

Q. Yes. A. Consult with them, go over their merchandise and their stocks in the marking room when the goods are received, go over their orders.

Q. Have you finished? A. I have.

2. Now, you were divisional merchandise manager; is that not so? A. Of ready-to-wear.

Q\ Of ready to-wear? A. Yes.

Q. And you had a superior, did you not, a direct superior who was the merchandise manager, from whom you in turn received orders and directions; is that not so? A. That is so.

Q. And who was that? A. Mr. Jeffery Lazarus.

10655

- Q. A Mr. Jeffery Lazarus, and he in turn was responsible to the executives; is that not so? A. That is so.
- Q. Let me ask you this: In the exercise of your duties as divisional merchandise manager, the policy of the store, was that fixed by you or by your superiors? A. By my. superiors.
- Q. And you received your orders from them? A. That is correct.
- Q. And carried them out to the best of your ability? A. That is correct.
- In the course of the exercise of your duties, when you came there, after 1933, did any of your superiors advise you that it was the policy of Shillito Company that they would not knowingly purchase copies of original garments where those originations had been made by members of 10656 the Fashion Originators Guild? A. That is correct.

Q. And did they at any time down to March 4, advise you that they had changed their policy?

Mr. Martin: March 4 of what year?

Mr. Weisman: March 4, that he testified to, 1935:

Mr. Martin: He has not testified-Mr. Weisman: 1936, I mean.

Examiner Averill: Yes, this is 1936.

Mr. Weisman: Yes.

Examiner Averill: Read the question.

(Question, as amended, read as follows: "Q. And did they at any time down to March 4, 1936, advise you that they had changed their policy?")

A. I cannot recall that.

By Mr. Weisman.

Q. In other words, you now will tell us that when you came to the New York market to see these manufacturers on March 4, 1936, you do not recall whether or not Shillito had changed its position with regard to the dealing in copies by it? A. When I left for the market, and here on March 4, knew we were red carded, and went to these manufacturers to get that merchandise, that, was on order—

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Examiner Averill: But the question is whether you knew at that time that there had been, if there was a change of policy on the part of your superiors in connection with their dealings with the F.O.G.A., and its regulations and rules?

The Witness: I cannot answer for the policy of the store.

Examiner Averill: Did they advise you?

The Witness: But I know our declaration was originally \$10.75 and up cost.

10659

By Mr. Weisman.

- Q. How do you know that? A. I was told that during my time with Shillito Company.
 - Q. Who told you that? A. The officers of Shillito and-
- Q. Did you ever ask for and see the declaration? A. I did not.

Q. Have you ever seen it? A. No, I have not.

Q. Now, is it your testimony that from the time you came to Shillito Company, in July, 1933, down to March, 1936, you understood that the declaration of co-operation only applied to merchandise which cost \$10.75 or up? A. That is correct:

Q. And is it your statement also that Shillito Company told you that that was contained in their declaration of co-operation? A. I believe that is correct.

Q. Do you know a Mr. Hile? A. Mr. Heiby.

Examiner Averill: Hiby?

By Mr. Weisman.

Q. How do you spell it? A. H-e-i-b-y.
Q. Do you know him? A. He is connected with Shillito.

Q. Well, do you know him? A. I know him.

Q. Who is he? A. Comptroller.

Q. Was he connected with Shillito Company on July 1, 1933? A. I believe so.

> Mr. Welsman: I offer the declaration of cooperation signed by John Shillito Company in evidence.

Voice: What is his first initial, Mr. Heiby?

Mr. Weisman: C. J. Heiby.

Mr. Martin: I have no objection if it is properly identified.

Mr. Weisman: Well, do you want me to identify It further?

Mr. Martin: I think that would be a very good idea.

Examiner Averill: All right, go ahead. Mr. Weisman: Will you mark this?

(A paper was thereupon marked for Identification Respondents' Exhibit 77.)

By Mr. Weisman.

Q. I now show you Respondents' Exhibit 77-

Examiner Averill: 77 for Identification.

Mr. Weisman: For identification; thank you.

By Mr. Wisman.

Q. I now show you Respondents' Exhibit 77 for Identification, and ask you whether or not you recognize that as the letterhead of the John Shillito Company? A. I do.

Q. Who signed it? A. I assume Mr. Heiby signed it.

Q. Well, you recognize that as his signature, do you not? A. I am not completely sure; I don't know definitely if that is Mr. Heiby himself.

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- Q. What do you believe it to me, his signature? A. I believe it to be his signature.
- Q. Hawe you seen him sign his name? A. No, I have not.
- Q. Have you seen papers signed with his name? A. I have.
- Q. And from having seen these papers signed from time to time with his name, you believe this to be his signature? You are not certain, but you believe it to be? A. I am not certain.
 - Q. But you believe it to be? A. That is correct.

Mr. Weisman: I now offer this in evidence (coursel referring to Respondents' Exhibit 77 for Identification).

10665

The document heretofore marked for Identification Respondents' Exhibit 77, was marked as an exhibit and received in evidence.)

Examiner Averill: One second, gentlemen, I want to read this paper, because there may be some talk about it, and I want to know what you are talking about.

Irving E. Plant-For Commission-Cross.

The Witness: Can I read it?

Mr. Martin: You want to read it?

The Witness: L would like to. A

Mr. Martin: Let him see it.

Mr. Weisman: We will give it to you in due time.

Examiner Averill: All right, sir.

By Mr. Weisman.

Q. Now, at the time that your superiors told you that they had adopted a policy of anti-style piracy, did they tell you whether or not they deemed the adoption of such policy to the benefit of the store?

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Mr. Martin: Objected to, your Honor.

Examiner Averill: Gentlemen, the paper itself shows:

Mr. Weisman: What?

Examiner Averill: The paper speaks for itself.

Mr. Weisman: Well, I want to know what they told him, Judge.

Examiner Averill: Pardon me.

Mr. Weisman: I did not ask him about the paper.

Examiner Averill: That is correct.

A. I cannot recall.

By Mr. Weisman.

10668 Q. W

- Q. When you came to Shillito Company, they told you that they had signed a declaration of co-operation; that is so, is it not? A. That is so.
 - Q. Yes. A. On \$10.75 and up.
 - Q. That is what they told you? A. That is right.
- Q. And they did not show you that declaration of cooperation? A. That is correct.
- Q. Reading from Respondents' Exhibit 77, I see that this exhibit reads, among other things, as follows: "Believing the principle declared by your members to be proper

for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed policy." Now, did you understand at any time what the principle declared by the members of the Fashion Originators Guild was?

Mr. Martin: Objected to as immaterial and irrelevant, and not proper cross-examination.

Examiner Averill: The objection is overruled.

A. Read the question.

Q. (Last question read.) A. The purpose of it was, to the best of my knowledge, by dresses from \$10.75 and up, they were not copies.

10670

By Mr. Weisman.

Q. Before you left for New York, did you speak with any of your superiors? A. The superiors spoke to me and instructed me to come to New York.

- Q. What did he tell you to do? A, When I left on March 3rd for New York, 1936, I was instructed to get the manufacturers to ship our merchandise.

Q. Well, did they tell you at any time, in words or substance, that they had changed their policy, or no longer thought it proper for the protection of the public, the retailer, and the manufacturer, to support the principle of design—the protection of design origination?

Mr. Martin: Objected to.

Examiner Averill: The objection is overruled.

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/ A. The original agreement was from \$10.75 and up-

By Mr., Weisman.

Q. No, no, no, no, no. Now, listen to my question and please try to answer it. If you do not understand it I will try to make it so plain that even you can understand it.

CIrving E. Plaut-For Commission-Cross.

Mr. Weisman: Now, read the question.
(Last question read.)

Examiner Averill: You can answer that "yes" or "no," they either did or did not.

A. Willing to support it from the \$10.75 and up, your Honor.

Examiner Averill: Yes.

By Mr. Weisman.

Q. They told you that? A. That is right.

Q. When you went to these manufacturers you went and saw them with the belief that John Shillito Company was still willing to protect original designs of these manufacturers? A. That is true.

Q. They had not told you, either in words or substance, had they, that they had communicated with the Fashion Originators Guild and advised the Guild that they would no longer protect style originations? A. I don't—

Q. How? A. I do not.

Q. You mean—well, that question was not susceptible of an answer "I do not."

Mr. Weisman: Will you please read the question? See if you cannot make an intelligent answer to it.

(Previous question read.)

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A. Only on the original agreement from \$10.75 and up.

. By Mr. Weisman,

Q. In other words, they had not told you that they had changed their policy? A. That is correct.

Q. You knew, did you not, that when these orders were taken and accepted by the manufacturer they were taken and accepted by the manufacturer by reason of the fact

that Shillito Company had expressed, directly or indirectly, to the manufacturer, that they would protect the original designs of these manufacturers with whom you had placed orders; is that not a fact?

(Question read, as amended, as follows: Q. Did you not know from the exercise of your duties in the New York market, that none of the members of the Fashion Originators Guild, with whom y a dealt, the manufacturing members, were willing to sell their merchandise to retailers who would not protect their styles?")

By Mr. Weisman.

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Q. Answer that.

Mr. Martin: Just a second—off the record. (There was a discussion off the record.) Examiner Averill: Read the question again. (Question, as amended, reread.)

Examiner Averill: If he does not know, then he may say so. If he does know it, he may answer it. That is easy, if the matter is within his knowledge.

A. That is correct.

By Mr. Weisman.

Q. Do you know whether or not the executives who had sent you on to New York were also aware of the practice you have just told us about on the part of the manufacturing members of the Fashion Originators Guild with whom you dealt? A. I don't know.

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Examiner Averill: It is the same answer.

By Mr. Weisman.

Q. Do you not know it was the practice of these manufacturers who were members of the Fashion Originators

Guild to refuse to deal with retailers who would not protect their style originations?

Mr. Martin: Objected to.

Examiner Averill: He has told us that already.

Mr. Weisman: Let him tell it to us again. I cannot see—I am lost in this score of speeches by my adversary and I want to make sure the record is straight in so far as I can see it.

Examiner Averill: He may answer the question. The Witness: May I have the question? (Last question read.)

Examiner Averall: He may answer that ques-

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A. That is correct.

By Mr. Weisman.

Q. Now, you testified on your direct examination, did you not, that you were acquainted with the Fashion Originators Guild of America? A. That is correct.

Q. What did you mean on your direct examination when you stated that you were acquainted with the Fashion Originators Guild of America? A. The protection of their styles from \$10.75 and up, and buying from these houses, it had been very pleasant; they never said we could not get any of their merchandise.

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Q. Do you know a Mr. Minster? A. I do.

Q. Who, is Mr. Minster? A. Vice-president of John Shillito.

Q. One of your superiors? A. That is correct.

Q. An executive? A. That is correct.

Q. And fixes the policy to some degree of Shillito Company, which you carry out? A. That is correct.

Q. Before you left for New York on March 3 did you talk with Mr. Minster at all? A. I cannot recall.

- Q. Well, would you say that you did not talk with him.
- Q. Do you remember whether Mr. Minster ever told you, in words or substance, that he had notified the Guild that they were through with the Guild? A. He mentioned to me that he was resigning from the Guild because he was not going to sign that other declaration, dresses below \$10.75 in cost.
- Q. I see. Do you mean—let us see. He told you that he was resigning from the Guild. Did he tell you whether he had resigned? A. I can't recall that.
- Q. Well, let me ask you his: Is this a letterhead of John Shillito & Company (showing paper to witness)? Do you recognize that? A. I do.
 - Q. Do you recognize Mr. Minster's signature? A. I do.

Mr. Weisman: I now offer this in evidence. Examiner Averill: Off the record. (There was a discussion off the record.)

(Whereupon the letter was marked Respondents' Exhibit 78 and received in evidence.)

By Mr. Weisman.

Q. So I take it that when you came yourself to New York you did not know that your company had advised the Fashion Originators Guild of America that they severed all connection with them? A. I did not.

Q. I take it you regularly read the "Women's Wear Daily"? A. That is correct.

Q. I take it you think that it is an authentic periodical and contains authentic statements of the doings in the industry in which you are interested?

> Mr. Martin: I object. We do not mind boosting the "Women's Wear Daily" a little, but I do not see what that has to do with the issues in this case.

Examiner Averill: Sustained.

Mr. Weisman: Exception.

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By Mr. Weisman.

Q. When you saw the statement in "Women's Wear" that your store was red carded, what did you understand by that?

The Witness: Read the question.
(Question read.)

A. Nothing more than just reading about it.

By Mr. Weisman.

Q. When you read about it, what did it convey to your mind? A. That we were red carded by the Fashion Originators Guild of America.

Q. What did that mean to you?

Examiner Averill: He means, "What does red carding mean to you?"

A. That we could not get any merchandise from the Fashion Originators Guild of America houses, houses connected with the Fashion Originators Guild of America.

By Mr. Weisman.

Q. Did this article state why you had been red carded?

A. If I recall correctly, we would not sign any declaration of dresses regardless of prices.

Q. Did you, when you saw this statement in "Women's Wear," discuss it with any of your superiors? A. I do not recall.

Q. What is your best recollection?

Mr. Martin: I object.

Examiner Averill: What is the materiality of whether he discussed it with his superiors or not? I cannot see it at the moment.

Mr. Weisman: I will not urge it if your Honor does not think it material.

Examiner Averill: It does not seem to me to be so at the moment.

Mr. Weisman: Withdrawn.

By Mr. Weisman.

Q. Have you ever discussed with Mr. Post the protection of merchandise below \$10.75? A. That is not the case here. I never discussed it with Mr. Post.

Q. Did you ever write him about it? A. I may or I may not have.

Q. What is your best recollection? A. That is the best recollection I have.

Q. When would you say for the first time that you understood that the Fashion Originators Guild of America, Inc., was protecting merchandise that cost below \$10.75?

Mr. Martin: If your Honor please, I must record a strenuous objection to that. It is absolutely immaterial.

Examiner Averill: I am not going to permit that any further. I am sorry, but I simply cannot do it. I will have to stop the examination along that line.

Mr. Weisman: I respectfully note an exception. If your Honor please, I ask to have this particular decument marked Respondents' Exhibit No. 79 for Identification.

Examiner Averill: It may be so marked.

(A letter was thereupon marked for identification Respondents' Exhibit 79.)

By Mr. Weisman.

Q. I show you a copy of a letter dated May 1, 1935, and which has just been marked Respondents' Exhibit 79 for

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Identification and ask you whether or not you received the original of that letter from Mr. Post? A. Yes, I received this.

- Q. Will you read that letter? A. Yes.
 - Q. Have you read it? A. Yes.
- Q. Referring to Respondents' Exhibit 79 for Identification, would you say that you received that letter on or about May 21, 1935? A. I assume around those dates.

Mr. Weisman: I offer the document in evidence.

(The document heretofore marked for identification Respondents' Exhibit 79 was marked as an exhibit and received in evidence.)

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Examiner Averill: You may proceed.

By Mr. Weisman.

Q. When you received Respondents' Exhibit 79 in evidence, did you call the subject matter thereof to the attention of your superiors?

Mr. Martin: I object as not proper cross-examination.

Examiner Averill: Objection overruled.

A. I do not believe I did.

Mr. Martin: Exception noted.

Examiner Averill: Exception granted.

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. By Mr. Weisman.

Q. Did you notice in this letter which is dated May 1, 1935, the following statement: "Obviously the purpose of our new program is to equalize style protection and make it universal for all stores by taking on membership among the \$10.75 dress manufacturers and consider the \$6.75 dress group for the late fall"? Did you notice those words in the letter? A. I do not recall them right well.

- Q. Did you read them when you read the letter? A. I suppose I did.
- Q. Do you know what you do when you read a letter?
 A. Oh, yes; I read it.
- Q. Did you not think and did that not indicate to your mind something different from the co-operation that your superiors had told you about? A. Yes.
- Q. Why did you not then discuss it with your superiors if you found there was reference to a different kind of co-operation?

Mr. Martin: I object as not within the scope of the direct examination.

Mr. Weisman: I feel it is very directly in it; it goes to the discussion that he referred to on his direct examination; it goes to the credibility of the witness; it goes to the reasonableness of his acts; it goes to the statement that he made that the store co-operated, as indicating what he knew about the co-operation, which was certainly brought out, over strong objection, on direct.

Examiner Averill: Objection sustained.

Mr. Weisman: Exception.

Examiner Averill: Noted. Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

Mr. Weisman: To save time, I will withdraw the question and I may come back to it later on after I have brought out other matters in connection with the examination.

Examiner Averill: Proceed.

By Mr. Weisman.

Q. On your direct testimony you testified you could not get the goods from these people; do you remember that?

A. That is correct.

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- Q. Did you not forget to tell us something about that? A. I I do not recall:
- Q. Did you not forget to tell us that shortly thereafter you'were offered all these goods and you did not want to take them? A. Long after.
 - Q. Long after? A. Long after.

Examiner Averill: Proceed.

- Q. When you were in New York you spoke to Mr. Bergdahl on your visit of March 4? A. I said I saw him in the office.
- Q. When you saw him did you just look at him or did 10697 Aou also talk to him? A. I said "Good morning" to him.
 - Q. So that the limit of your discussion was the two words "Good morning," was it? A. It may have been that.
 - Q. Did you not discuss this difference that you had had with the Fashion Originators Guild of America at that time? A. I do not recall.
 - Q. Was Mr. Bergdahl your representative in New York on all matters of that kind? A. I do not know that.
 - Q. You mean you do not know that? Did you not read about it and, in fact, did you not yourself write that he was such? Did you not write so over your own signature? A. I do not recall whether I did or not.
 - Q. You do not recall? A. I may have.

Q. I did not ask you whether you may have. Do you . 10698 not remember doing that? Do you not remember that you did? A. There is a possibility.

> Q. I did not ask you whether there is a possibility. We all know what possibilities are. I am asking you, as the divisional merchandise manager of John Shillito Company, Cincinnati, Ohio, did you not advise the Fashion Origis nators Guild of America by means of a letter over your own personal signature and in the name of your company,

John Shillito Company of Cincinnati, Olno, that Mr. Bergdahl, the gentleman from the particular division with the A.M.C. and the witness who just preceded you, was authorized to represent you in the dealings with the Fashion Originators Guild of America? A. I may have.

Q. I asked you whether you did or not?

Examiner Averill: I suppose you have a letter in regard to the subject. Show him the letter and we will get along faster.

Mr. Weisman: I want to show it by the witness' own testimony as to just what he knew, if your Honor please.

Examiner Averill: You may do so.

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By Mr. Weisman.

Q. As a matter of fact, do you not know that you did write them about that? A. I do not recall. I may have been—I may have been the one that wrote the letter, or it may have come from the executives, if it were written.

Q. You knew that your store put on all of its letterheads the words "Associated Merchandise Corporation Member"; did you not know that? A. "Member of the Associated Merchandise Corporation." That is correct, yes.

Q. Did Mr. Bergdahl tell you what was the A.M.C. policy with regard to this controversy between John Shillito Company and the Fashion Originators Guild of America?

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Mr. Martin: I object. It is incompetent, immaterial and irrelevant for any purpose whatsoever, if your Honor please.

Examiner Averill: Objection sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did Mr. Bergdahl ever tell you in words or in substance that by reason of the fact that the A.M.C. represented a large number of stores, that the Fashion Originators Guild of America, Inc., and its members would not dare to refuse to bow down to its dictates and would not dare to refuse to do its bidding?

Mr. Martin: Same objection.

Examiner Averill: The objection is sustained, gentlemen.

Mr. Weisman: Exception:

Examiner Averill: Noted

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By Mr. Weisman.

Q. Did Mr. Bergdah! ever tell you in words or in substance that the A.M.C. would succeed in breaking the Guild and its members if its members stood together and refused to buy merchandise from the members of the Guild—the members of the A.M.C.—under the declaration of co-operation?

Mr. Martin: I object.

Examiner Averill: Sustained.

Mr. Weisman: Exception. I think it is perfectly competent to show whether they really wanted this merchandise. When you take these questions and link them up with their refusal to take the merchandise which was offered to them within three days, I say to your Honor that it illuminates the whole situation and shows that he came on to New York and he took all of the testimony down and he wrote it all down as to their conversations, and that this was all part and parcel of a fraudulent conspiracy entered into between these various stores and the A.M.C. to destroy these manufacturers in the pro-

gram that they had theretofore gone along with, and I say it is perfectly competent in view of the prior testimony because it shows that they did not want the merchandise at all and this was simply a ruse to accomplish their purposes.

Mr. Martin: I move that that tirade be stricken from the record.

Examiner Averill: As a part of the affirmative defense it may be correct, but as a part of the cross-examination I do not think it is pertinent; and therefore I will sustain the objection.

Mr. Weisman: Exception. If your Honor please, it is now 12.30 and I should like to take the noon adjournment now if your Honor doesn't have any objection.

Examiner Averill: Gentlemen, it is 12.30, so we will adjourn until 2 o'clock for lunch.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION-2 P. M.

Examiner Averill: Well, gentlemen, when you are ready, you may proceed.

IRVING E. PLAUT resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Plant, have you at any time since February refreshed your recollection as to whether or not you saw a notice in the "Women's Wear Daily" of the red carding of Shillito Company? A. I remember seeing it in "Women's Wear."

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- Q. Are you certain of that? A. Yes.
- Q. Are you certain that you saw it in the month of February? A. I believe that is correct.
- Q. Well, it could not be any other time, could it, if that was the first you learned of it? A. That is correct.
- Q. Now, would it surprise you to learn that no such notice ever appeared in any issue of the "Women's Wear Daily" for February? Then what would you say, where you learned for the first time of the red carding? A. Then show me the date when it appeared.
- Q. You show it to me. I did not say it ever appeared. A. Yes.
- Q. What I want to know from you now is whether anybody prior to your taking the stand here refreshed your recoflection by telling you that such an item appeared in the "Women's Wear Daily" during the month of February?

The Witness: Repeat that question, please. (Last question read.)

By Mr. Weisman.

- Q. 1936. A. No, they did not.
- Q. Did you prior to taking the stand discuss the matter that you thought such a notice appeared in the "Women's Wear Daily" for the month of February, 1936? A. No.
- Q. Well, now, if such notice did not appear, or such reference did not appear in the "Women's Wear Daily" during the month of February, 1936, can you offer as any explanation as to where you really heard of the fact that the Shillito Company had been red carded? A. I can't recall.
 - Q. Is it possible that one of the executives of the store might have told that to you and that you never saw it in any paper? A. I can't recall that.

- Q. Well, a few moments ago you recalled that you saw it in a paper. Now you say you cannot remember whether you saw it in a paper or not. A. You did not ask me that.
- Q. Well, I am asking you. I do not want to quarrel with you. I want to get it very plain. Are you absolutely certain that you saw it in the "Women's Wear Daily" during the month of February, 1936, a statement setting forth, in words or substance, that Shillito had been what we have . referred to here as red carded by the F.O.G.A.? A. To the best of my knowledge I saw it in the "Women's Wear" in February.
- Q. If it should appear that there was no such item in 10712 the "Women's Wear" for the month of February, 1936, where would you then say that you learned this? A. Manufacturers not shipping us the merchandise.
- Q. What would your explanation be for having told us here that you saw it in the "Women's Wear"? Well, what do you say? A. I said I recalled seeing it in February in the "Women's Wear"---
 - Q. Now, that is not what the Judge said to you. A. See?
- Q. I said to you, if it did not appear in "Women's Wear," what would your explanation be to us and to the Court of your statement now that you think you saw it in "Women's Wear"? . What would have led you to that belief? · A. I cannot answer that.
- Q. Did anybody ever-tell you to say that you saw it in "Women's Wear"? A. They did not.
- Q. You said a moment ago that you might have learned of the red carding from the manufacturers. Do you remember saying that to me only two minutes ago? Correct.
- Q. Well, how could that be possible when you stated that after you saw the red carding you came to New York on March 4? I will withdraw that. After the middle of

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Irving E. Plant-For Commission-Cross.

February, when was the first time that you saw the manufacturers about this goods? A. March 4 we saw them in New York.

- Q. Well, what did you do between February 17—that is about the middle of the month, when you were red carded—and March 4? Did you not come to New York at all? A. I cannot recall that we came to New York between those dates. Might have been there prior to that.
 - Q. No. Were you there between those dates? A. I can't recall—
 - Q. Well, look- A. -if we have or we have not.
 - Q. What? A. I can't recall if we have or if we have not.
- Q. Well, that is perfectly apparent, you either have or you have not. A. During those times.
- Q. I understood you to testify this morning that you supervised all advertising in connection with your department; is that so? A. That is correct.

Mr. Weisman: Mark this, please.

(A paper was marked for identification Respondents' Exhibit 82.)

By Mr. Weisman.

- Q. I show you Respondents' Exhibit 82 for Identification and ask you whether or not you recognize that (handing paper to witness)? A. I do.
- Q. What is it? A. Dresses with the F.O.G.A.—Q. No, what is this, the exhibit? A. A copy of Shil-
 - Q. No, what is this, the exhibit? A. A copy of Shillito's ad.
 - Q. That was run in the paper? A. That is correct.Q. Pursuant to your directions? A. That is correct.
 - Mr. Weisman: I now offer this in evidence.

Examiner Averill: We will admit the paper in evidence and mark it Respondents' Exhibit No. 82.

(The paper heretofore marked for identification Respondents' Exhibit 82 was marked as an exhibit and received in evidence.)

Mr. Haycraft: Would it be out of order, Mr. Examiner, to inquire as to what issue in this case, or what statement of the witness as to this exhibit, is intended to be referred to as relevant? I cannot figure it out.

Examiner Averill: Only this: the witness said he prepared advertisements; he was asked whether he prepared this, and he said he did. That is the one statement, except that the general trend of the witness' testimony is in connection with their policy. Now, this goes to show that at the time of its inception, namely, in October—

Mr. Haycraft: November.

Examiner Averill: In November, on November 6, 1935, which, as you recognize, antedates the matters for which he came to New York, that at that time, at any rate, they were in accord up to a certain point, at any rate, with the policies of the F.O.G.A.

Mr. Haycraft: Then it substantiates his testimony on direct examination.

Examiner Averill: Absolutely; that is all.

Mr. Haycraft: I just wanted to get-

Examiner Averill: It is that part of his testimony, understand—off the record.

(There was a discussion off the record.)

Mr. Weisman: I want to clear up something that I think perhaps is not clear in your Honor's mind. Examiner Averill: Yes, sir.

By Mr. Weisman.

Q. What is your average mark-up-

Mr. Martin: Objected to-

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By Mr. Weisman.

- Q. —in the dress department? A. Costing \$10.75 and up?
 - Q. Yes. A. Around 38 per cent.
- Q. When you say around 38 per cent., do you mean 38 per cent. of the selling price or of the cost? A. Cost.
- Q. Well, what would you say that your average sales price for a garment costing \$10.75 was? A. \$16.95.
- Q. And it is your opinion that the difference between \$10.75 and \$16.95 is 38 per cent. of \$10.75? A. How?
- Q. Is that correct? A. You said an average from \$10.75 cost and up, not on one price line.

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Mr. Weisman: Read the question. (Last question read.)

By Mr. Weisman.

- Q. Is that correct? A. Read the question again, please.
 (Question re-read.)
- A. I am talking about cost on retail.
- Q. No, is that correct what you have just said? A. On the retail, the difference.
 - Q. It is 38 per cent. on the retail? A. Approximately.
- Q. Well, then, why did you tell me a few moments ago that your 38 per cent. was 38 per cent. of the cost?

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Mr. Martin: Now, if your Honor please, I am going to interpose another objection here, that all of this entire line of cross-examination is irrelevant and immaterial and outside of the scope of the direct examination.

Examiner Averill: There is not a shadow of doubt on that part of it.

Mr. Weisman: Well, then-

Examiner Averill: But, as I stated when I admitted it, I admitted it and gave the reason for its admission. If he wants to find out that one little thing, I do not know why he should not find it out.

Mr. Haycraft: He has told you about cost and now he wants to do something else.

'Mr. Weisman: Nos

Mr. Haycraft: He has told us that \$10.75 was the cost of these garments at \$16.95.

Examiner Averill: He also gave us a percentage.

Mr. Weisman: Yes.

Mr. Haycraft: He also gave a percentage on an average.

Mr. Weisman: No, but you-

Examiner Averill: He did not say that was . mark-up on an average.

Mr. Weisman: No, he said \$10.75 was cost.

Examiner Averill: Then I do not see why-

Mr. Haycraft: That is what this whole cross-examination is going to.

Mr. Weisman: May it please your Honor—please do not take this.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

By Mr. Weisman.

Q. Now, Mr. Plaut, you believed this advertisement which is Respondents' Exhibit 82 to be truthful, did you not?

Mr. Martin: Objected to.

Examiner Averill: Objection sustained, gentlemen.

Mr. Weisman: May it please your Honor, I want to show that the very things he says were a fact 10724

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are by this advertisement shown not to be a fact, if you let me go along and show it.

Examiner Averill: Gentlemen, there is the thing that speaks for itself. You have his testimony that it speaks for itself and we can compare the two without asking him.

Mr. Weisman: No, we cannot, your Honor, because your Honor has not seen the point I am asking him——

Mr. Martin: I do not see it.

Mr. Weisman: You certainly would not. That is not surprising.

Mr. Martin: How did you guess?

Mr. Weisman: I do not have to guess; I have been around the circuit with you.

Examiner Averill:. Off the record.

Mr. Weisman: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record. The last question was withdrawn—either overruled or withdrawn.

Mr. Weisman: I do not care, we will take it as withdrawn and we will have this in the record (showing paper marked Respondents' Exhibit 82 to the Trial-Examiner).

Examiner Averill: That is all right; give it to me.

10728

By Mr. Weisman.

Q. Just one question. Prior to 1936 was Shillito Company, while co-operating with the Guild in its policy of anti-piracy of original designs, in the habit of returning merchandise which was copied if the merchandise cost less than \$10.75 wholesale?

Mr. Martin: If he knows.

Mr. Weisman: If you know.

The Witness: Read the question, please.

(Last question read.)

A. We did.

By Mr. Weisman.

Q. Did you do that in accordance with your declaration of co-operation?

Mr. Martin: Objected to. He does not know.

Mr. Weisman: Wait a moment. He knew a great deal when he testified for you; he knew---

Examiner Averill: How?

Mr. Weisman: The question is, "Did you perform in accordance with the issuing of this declaration?"

Examiner Averill: But now, if you are going to ask him, you will have to permit it "in accordance with your understanding."

(Question, as amended, read as follows: "Q. Did you do that in accordance with your understanding of your declaration of co-operation?")

A. Dresses was returned—

By Mr. Weisman.

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Q. Dresses were returned. A. Were returned when the Guild shopper came into our department and identified them.

Q. As copies?

Mr. Martin: Now, let him answer. He will—— Examiner Averill: Oh, no, but that is what he means. Mr. Weisman: Yes.

Examiner Averill: Just to identify them.

Mr. Weisman: That is it.

Examiner Averill: That is correct?

The Witness: That is right.

By Mr. Weisman.

Q. Yes, and if she identified a dress which cost \$6.75 or \$4.75 as a copy, you would return it; is that not correct? A. We were co-operative.

Q. Yes. A. In returning.

Q. Yes, and you returned it? A. Yes.

10733 Q. And would you so return it in accordance with your understanding of what your declaration of co-operation called upon you to do?

The Witness: Read that question, please? (Question read.)

A. Correct.

Q. I did not hear you. A. Correct.

(A paper was thereupon marked for identification Respondents' Exhibit 83.)

By Mr. Wei man.

Q. What is that? A. Dress ad.,

10734

Q. Look at it. A. Dress ad.

Examiner Averill: Dress ad of whom? The Witness; Shillito Company dress ad.

By Mr. Weisman.

Q. It was caused to be inserted by Shillito Company?

A. Correct.

Q. In the Cincinnati "Times" of April 2, 1936? A. "Times-Star," to be correct.

- Q. What? A. "Times-Star," to be correct.
- Q. Cincinnati "Times-Star" of Thursday, April 2, 1936?

Examiner Averill: He said yes.

By Mr. Weisman.

- Q. Is that correct? A. Yes.
- Q. Was that done under your direction? A. And advertising department.
 - Q. Yes. A. Dresses in my division.
- Q. These dresses are all in your division? A. That is right.

Mr. Weisman: I now offer this ad.

Mr. Martin: I now object to this, your Honor, 10736, on the ground it is irrelevant and immaterial and in no way germane to the testimony of this witness and contrary to the prior ruling of the Trial Examiner, and it is further outside of the scope of direct examination and has no bearing on the issues in this case.

Mr. Feldman: In the case of-

Examiner Averill: How?

Mr. Weisman: Just an echo, Judge.

(Mr. Feldman confers with Mr. Weisman at this point.)

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record. Gentlemen, the objection will be sustained for the reasons that we have stated off the record, and the paper which has been identified by the witness as an advertisement of the Shillito Company of dress goods which are in his department and the same bearing date of April 2, 1936, will be marked Respondents' Exhibit 83 for Identification and returned to counsel for such use as he may desire in the future to make of the paper.

By Mr. Weisman.

Q. I show you this paper and ask you if you recognize that (handing paper to witness)?

Examiner Averill: Mark it.

Mr. Weisman: Yes.

(A paper was thereupon marked for identification Respondents' Exhibit 84.)

A. I recognize it as a Shillito ad, but I don't have anything to do with the basement.

10739 By Mr. Weisman.

Q. You recognize it as a Shillito Company ad? A. Yes. Q. In what paper would you say it was run? A. It says there Cincinnati "Post."

Q. And what date? A. Friday, April 10.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: On the record. Gentlemen, the advertising appearing in the Cincinnati "Post" for April 10, 1936, which is testified to by the witness as being a Shillito Company basement ad, but not in his department, will be marked Respondents' Exhibit 84 for Identification and returned to counsel for respondent for such use as he may desire. All right, sir.

10740

(A paper was thereupon marked for identification Respondents' Exhibit 85.)

By Mr. Weisman.

Q. I show you this telegram, dated November 4, 1935, marked Respondents' Exhibit 85 for Identification, and ask you did you cause that to be sent to Mr. Post (handing paper to witness)? A. That is correct.

'Mr. Weisman: I offer this telegram in evidence.

Mr. Martin: Objected to as irrelevant, immaterial, having nothing to do with the issues in this case and outside of the scope of the witness' testimony and not proper subject of cross-examination.

Examiner Averill: Gentlemen, I must sustain that.

Mr. Weisman: Just wait a moment, Judge, before you sustain this. You better let me tell you what the purpose of it is. We will show now, having laid the foundation with this, that the houses referred to here, which we have a list of, were such houses as made goods down at \$4.75 and \$6.75, showing that at this time they were handling goods at \$4.75 and \$6.75, so obviously the story about \$10.75 protection could not be correct.

Examiner Averill: All right. No, sir, I cannot receive it. If you want to show those things, you may show them on direct, maybe. I do not know what good they would be on direct, but I cannot admit that.

Mr. Weisman: Your Honor please-

Examiner Averill: Does not cover the testimony of the witness. You cannot open the doors any further along that line.

By Mr. Weisman.

Q. During the year 1935 were you doing business with the International Dress Company at 1400 Broadway?

Mr. Martin: Objected to as irrelevant and immaterial, not proper cross-examination.

Mr. Weisman: I am entitled to ask him who he did business with.

Examiner Ayerill: In what year?

Mr. Weisman, 1935, prior to his red carding.

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Mr. Martin: Clearly not proper cross-examination.

Examiner Averill: Gentlemen, I think that objection is sound. It is certainly not part—not proper cross-examination under the direct and I have gone too far that way now; I cannot go any further.

Mr. Weisman: Exception.

Examiner Averill: Yes.

Mr. Weisman: I make this offer of proof: If I had been permitted to have pursued the inquiry, he would have stated he was; I would thereupon be in a position to show that the International Dress Company manufactured tresses and sold them at a price below \$10.75.

The Witness: In the summertime.

Examiner Averill: Do not testify.

Mr. Weisman: And I would have shown the same with regard to the Casino Dresses and the same with regard to Henry Gans.

Examiner Averill: You may offer those in your own-

Mr. Martin: I move, your Honor, that the offer to prove be stricken.

Examiner Averill: That is granted, because that is a part of your direct. If you wish to put those things in, you would perhaps be permitted to do that. I do not know how it will be then.

Mr. Weisman: Exception.

Examiner Averill: Yes, sir.

Mr. Weisman: Thank you.

Examiner Averill: Off the record.

. (There was a discussion off the record.)

Examiner Averill: On the record.

10745

By Mr. Weisman.

Q. Have you got with you the memorandum from which you testified yesterday? A. I have.

Q. Will you turn to it, please?

Examiner Averill: Has anybody got a copy of yesterday's?

Mr. Martin: I will give you a copy of it, your Honor.

Examiner Averill: Mr. Bergdahl had a copy of it a while ago. 9

Mr. Haycraft: You mean of the record?

Examiner Averill: Yes. I mean what he testified to yesterday.

Mr. Haycraft: Yes. All right, sir, you may have it (handing record to the Trial Examiner).

By Mr. Weisman.

Q. When you called upon these people at that time, did you or did you not know that they had an agreement among themselves that they would not sell to any retailers who were refusing to protect style originations? A. That is correct.

Q. Mr. Plaut, when you called upon Robbins and you saw Mr. Lagowitz there, did you not? A. That is correct.

Q. How do you know it is correct? A. I saw Mr. Lagowitz there.

Q. Well, do you remember that? A. I do.

Q. Or do you sat it is correct because it is on that paper in front of you? Which is it? A. Both is correct—both are correct.

Q. If you did not have the paper, would you know it was Mr. Lagowitz that you saw? A. I have known him for years.

Q. Then you know him? A. Yes.

10119

- Q. Now, when you saw Mr. Lagowitz, you asked him, did you not, whether or not he would ship you this merchandise through somebody else? A. That is correct.
 - Q. What did you mean by that? A. Just what I said.
- Q. Well, tell us. I do not understand exactly what you mean. A. Well-
- Q. Did you mean that he should seek through some subterfuge to ship you these goods contrary to his arrangement with the other members of the Guild, by consigning them to someone else, which consignee would in turn send them to you? That is what you meant, was it not? A. Read that question.

10751

- Q. (Last question read.) A. Just asked him a question, if he would ship goods through someone else.
- Q. Well, what did you mean by that question? A. It is a simple question, it answers for itself—it speaks for itself.
- · Q. You answer it for us now. A. O.K.
- Q. Mr. Divisional Merchandise Manager of Shillito Company. A. Said, "Will you ship to anyone else?" He said, "No."
- Q. Well, what did you mean? A. To ship through someone else than ship to Shillito. I asked him——
- Q. Why did you want him to ship these goods through somebody else for you? A. I do not understand that.
 - Q. What was in your mind? A. What?

- Q. What was in your mind? A. I do not get the question.
 - Q. What was in your mind? A. Me?
 - Q. You. A. Oh, I meant merchandise.
- Q. Whom did you think he was going to ship them to so you could get them? A. I have no idea.
 - Q. No idea? A. No idea.
- Q. What was the difference between shipping it to you and shipping it to someone else for and on your account?

Mr. Martin: I object to all of this as incomo petent, immaterial and irrelevant for any purpose whatsoever.

Examiner Averill: You have already probed him enough on that.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you mean that this man, on behalf of C. H. D. Robbins, caused these dresses to be shipped to you surreptitiously?

Mr. Martin: I object.

Examiner Averill: Sustained.

10754

Mr. Weisman: Exception. I make the offer to prove that had I been permitted to have the answer to that question the witness would have so testified.

Mr. Martin: I move that the offer to prove be stricken from the record.

Examiner Averill: Overruled.

Mr. Feldman: How can you strike an offer to prove?

Mr. Albert: Never heard of such a thing.

By Mr. Weisman.

Q. Were you anxious to get those dresses by hook or crook?

Mr. Martin: I object.

Examiner Averill: The witness may answer the question. I will let him go a little further into that.

A. I would not say that. I said through someone else.

By Mr. Weisman.

Q. That was by crook. You mean that you were not anxious to get them by hook, but you wanted to get them by crook; is that the idea?

Mr. Martin: I object.

Examiner Averill: I think we all understand about it. Let us go to something else.

By Mr. Weisman.

- Q. I just have one other further question. You testified yesterday that there was a shopper by the name of Mrs. 10757 Levy? A: That is correct:
 - Q. In Cincinnati? 'A. Yes.
 - Q. That is correct, that you so testified? A. Yes, and I also knew you had a shopper by the name of Mrs. Levy.
 - Q. This shopper came into your store quite frequently?

 A. She did.
 - Q. She came in openly and notoriously and there was nothing furtive about her visits, was there? A. No.
 - Q. You knew she came? A. Oh, I knew she came in, yes. She came in on the floor and looked around.
 - Q. You knew her? A. We did.
 - Q. And the help knew her? A. I do not believe the help knew her.
 - Q. Some of your help? A. Possibly the buyers.
- 10758 Q. She came into the store for the first time, did she not, and she came up to you and told you who she was?

 A. I believe she did.
 - Q. Naturally, you would not let a stranger come in and go over your stocks, would you? A. A public institution like that, we have thousands of customers coming in and looking over our stocks and we do not know who they are. They come in and we do not know whether they come in to buy goods or what they come in for. We could not possibly know that.

- Q. How did you find out that she was a shopper, then?

 A. She came down and visited me and told me that she was.
 - Q. Oh, she told you she was? A. She did.

Examiner Averill: A recess will be taken for five minutes.

(There was a short recess taken.)

Examiner Averill: Back on the cord. Proceed.

Redirect examination by Mr. Martin.

Q. Mr. Plaut, on cross-examination Mr. Weisman asked you as to when you came to New York on or about March 4 and when you left? A. Yes.

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- Q. Did you check it up with the hotel to find out, the Hotel New Yorker? A. I did.
- Q. What did you do and what did you find? A. I asked about it, I checked it up last night at the New Yorker Hotel and I have that verified, that I got in New York Tuesday night, March 3, by plane from Cincinnati, Ohio.

Q. When did you leave— A. May I finish?

Q. Go ahead. I did not mean to interrupt you. A. I had that werified by the New Yorker Hotel. I can refresh my memory—

Mr. Martin! All right.

Mr. Weisman: I object to his refreshing his memory unless he says his memory has need to be refreshed. He has not—this witness has not said yet that his memory needed to be refreshed. I think that he should go ahead until his memory needs to be refreshed. Certainly there is no necessity for him reading from a document until he says he cannot remember.

Examiner Averill: In this particular matter I do not think there will be any harm in the witness going ahead and stating it that way.

By Mr. Martin.

Q. When did you leave? A I left on March 6, Friday night, and was back in Cincinnati Saturday morning.

Mr. Albert: That is correct.

By Mr. Martin.

Q. I hand you Respondents' Exhibit 81, and ask what was that telegram—in other words, why was that telegram sent to the F.O.G.A.— A. I do not understand.

Q. Handing you Respondents, Exhibit 81, Mr. Plaut, I will ask you why was that telegram sent to the Fashion Originators Guild of America by your store, if you know?

Mr. Weisman: I object to why it was sent. The telegram speaks for itself. He cannot say that he sent the telegram for some reason when the telegram might indicate another.

Examiner Averill: This does not show the reason.

Mr. Weisman: I do not think that would be testimony of any value, if your Honor please. He might have sent that because he expected his wife to have twins.

Examiner Averill: On the other hand, he might have had a telegram from someone else and sent it in reply thereto.

Mr. Weisman: I submit that the question should be asked in a different form.

Examiner Averill: He has asked his reason. Objection overruled.

Mr. Weisman: Exception.

10763

10764.

By Mr. Martin.

Q. Why was that telegram sent? What was your reason for sending it? A. Louise Mulligan wired John Shillito Company to authorize the F.O.G.A. for them to ship us merchandise.

Mr. Martin: I ask to have this document marked as Commission's Exhibit 888 for Identification.

(The document was marked for Identification Commission's Exhibit 888.)

Mr. Weisman: I do not understand the answer, I think, your Honor.

Examiner Averill: Let him see the telegram and you will understand. There is no great deep dark secret about this matter.

19766

By Mr. Martin.

Q. I hand you Commission's Exhibit 888 for Identification. A. Yes.

Q. What is it? A. Telegram to the John Shillito Company attention of Miss Doris Wood from Louise Mulligan.

Q. What is the date? . A. March 17, 1936—I beg your pardon, March 12, 1936.

Examiner Averill: Who from?

The Witness: Louise Mulligan. The wire-

By Mr. Martin.

10767

Q. Do not say what it is. Do not state its contents. Was this received by the John Shillito Company? A. That is correct.

Mr. Martin: I offer this in evidence.

Mr. Weisman: No objection.

Examiner Averill: Gentlemen, the telegram in question which has just been identified by the wit-

ness and to which there has been no objection, and which is a telegram to the John Shillito Company. Cincinnati, Ohio, signed Louise Mulligan, Inc., and from Chicago, Ill., under date of March 12, 1936, will be received in evidence and marked Commission's Exhibit 888, having heretofore been marked Commission's Exhibit 888 for Identification.

(The document heretofore marked for Identification Commission's Exhibit 888, was marked as an exhibit and received in evidence.)

By Mr. Martin.

10769

Q. Did this telegram prompt you to send a telegram which is Respondents' Exhibit No. 81? A. That is correct.

Mr. Martin: That is all.

Recross-examination by Mr. Weisman,

Q. Did not the desire to get the goods prompt you to send a telegram, or did you not want the goods? A. We wanted the goods. .

Q. Then was it the wanting of the goods that prompted you to send the telegram?

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Examiner Averill: You asked him what prompted What prompted him was the lasting moving thing before him before he sent the telegram, and that does not mean because he needed the goods that he sent the telegram, but he told you he sent it because he received this telegram, the underlying motive is not inquired for. There may have been an undercurrent of desire back of the whole thing, but this seeks the prime motivation.

By Mr. Weisman.

Q. In other words, if you did not get that telegram from Louise Mulligan you would not have wired the Fashion Originators Guild of America; is that correct? A. That is correct.

Q. Why did you wire the Fashion Originators Guild of America with regard to the other people? You did not have any telegram in those cases.

Examiner Averill: What? (Question read.)

Mr. Martin: I object. He has already answered that. The facts are not as he has stated them there. I object to an improper premise being the basis of the question.

Examiner Averill: Let the reporter read the question.

(Question read.)

Mr. Martin: I object. He has already answered that.

Mr. Weisman: There is no prompting to the others.

The Witness: Louise Mulligan's line was a confined line to the Shillito Company in Cincinnati, Ohio.

By Mr. Weisman,

Q. Did you say that you got this telegram from Louise Mulligan? A. Miss Doris Wood got the telegram from them, Miss Doris Wood of the John Shillito Company, and she turned it over to me.

Q. Did you answer it? A. I believe one of the executives of the John Shillito Company answered this wire.

Q. How do you know that? A. Is that telegram shown here?

10775

- Q. Did you say a moment ago that you answered that telegram? A. I will correct that statement and say a member of the firm answered the telegram.
 - Q. How do you know a member of the firm answered the telegram? Are you sure you did not answer it? A. A telegram was answered there.
- Q. No, no, no. Answer my question. In answer to a question by Mr. Martin you said that you answered that telegram.

Mr. Martin: No, sir; I did not ask him did hearnswer the question.

Mr. Weisman: Will you please keep still and make a legal objection instead of trying to prompt the witness.

Mr. Martin: I just want to try to keep you straight.

By Mr. Weisman.

- Q. Do you remember seeing that telegram—do you remember receiving that telegram? A. There is no question about it.
 - Q. You, personally? A. Miss Doris Wood received it.
- Q. What did Miss Wood do with it so far as you know when she received it? A. She turned it over to me.
- Q. What did you do with it? A. I took it up with Mr. Minster of the John Shillito Company.

10776

- Q. What did Mr. Minster of the John Shillito Company do with it? A. If I recall correctly, he wired the Fashion Originators Guild of America to authorize Louise Mulligan to ship the merchandise to us.
- Q. That was the same day that you received the telegram? A. That I do not recall.
- Q. Well, it appears so. Did you not testify that this was a copy of the telegram (indicating)?

Examiner Averill: He did not.

Mr. Weisman: He said it came.

Examiner Averill: No, because you got it in by way of agreement. You did not press the witness with those questions because you did not know what his answers might be, and so it was put in by agreement between you and Mr. Martin, and he let it go in, and I permitted it to go in, and I am not quite sure that I did wisely in doing so in view of later developments.

Room 901, 45 Broadway, New York, New York, November 20, 1936.

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Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same appearances.)

H. O. BERGDAHL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

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Q: At the last session at which you testified, or in your former testimony, Mr. Bergdahl, you were asked to look in your files to see if you could find the correspondence with members of the A.M.C. who were advised, or advising them with respect to the understanding you had with Mr. Rentner in the summer of 1933. Do you recall the papers to which I have reference? A. Yes. I know what you are talking about.

- Q. Have you made a search of your files for that purpose? A. Yes, sir.
- Q. What is this sheaf of papers which I am now handing you? A. These are letters between our stores—between executives in our stores and Mr. Reilly, our director.
- . Q. In what month and in what year? A. All of them seem to be, or are, in the last week of June, 1933.
- Q. Do they relate to the subject matter I asked you to inquire about? A. They do.

(The paper heretofore marked for Identification Commission's Exhibit 900, was marked as an exhibit and received in evidence.)

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sions, sir?

By Mr. Haycraft.

Q. Mr. Bergdahl, I call your attention to the following language in this letter, Commission's Exhibit 900: "This is to informe you that the members of the Association of Buying Offices, Inc., will endorse this movement on your part to its member retailers. It is understood, of course, that we are doing this based upon the conclusions arrived at through the many conferences we have had in which we have stated our problems." A. (Witness referring to paper.) The conclusions were that it would not be advisable for Mr. Rentner and Mr. Post openly to admit that we had exemptions, but they would grant verbally those. exemptions to us, since they recognized that leniency would be required until such time as the chains were members of the Guild; and, furthermore, they recognized that leniency was necessary until such time as the low-end manufacturers would be equipped with designing staffs

Examiner Averill: That is enough.

to take care of retailers' requirements. Are those conclu-

By Mr. Haycraft.

Q. How did you arrive at those conclusions?

Examiner Averill: That is a fair statement.

Mr. Weisman: Now, I object to the next question.

Examiner Averill: What is it?

Mr. Weisman: "How did you arrive at those conclusions?" Now, they are going into the operation of his mind. He has given his conclusion. Having given us the ultimate, it is perfectly incompetent for this witness to keep on spraining his wrist by patting himself on the back. He has given us his conclusions, and until such time—

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Examiner Averill: I think the objection is sound, gentlemen!

Mr. Haycraft: All right.

Examiner Averill: He has told us his conclusions, now. The objection is sustained.

By Mr. Haycraft.

Q. What was the basis for those conclusions?

Mr. Weisman: Objected to.

The Witness: May I answer that one?

Examiner Averill: What was the question?

(Question read.)

Mr. Weisman: I object.

Examiner Averi!!: Has he not told us?

Mr. Haycraft: I will put it this way-

Examiner Averill: Now, his conclusion is drawn. Read the question.

(Question again read.)

Examiner Avefill: Now, off the record.

(There was a discussion off the record.)

Mr. Haycraft: I haven't any further question.

I withdraw the question.

Examiner Averill: I think that answers it. I do not see that there is anything further to go on.

The Witness: May I add anything further about that paragraph?

Mr. Haycraft: Well, I am going to ask you-

The Witness: I am sorry.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: All right, gentlemen, let us go forward.

Mr. Weisman: By the way, you were not even right about that, one of your usual exaggerations.

Examiner Averill: Have you not finished with this (referring to Commission's Exhibit 900)?

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By Mr. Haycraft.

Q. The reference to the many conferences in which we have stated our problems refers to what conference (handing Commission's Exhibit 900 to witness)?

Mr. Weisman: May I have that last question? (Question read.)

Mr. Haycraft: That is, conference with whom, or between whom.

Mr. Weisman: May I have the question. (Question again read.)

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A. Conferences between members of the A.B.O. and members, or executives of the F₁O.G.A.

By Mr. Haycraft.

Q. What members of the A.B.O.?

Mr. Weisman: If you remember.

A. I do remember.

Mr. Weisman: I know, I can see it by your joy.

A. Mr. Greenebaum and myself, particularly, as well as Mr. Rentner and Mr. Golby of the Guild, particularly, of the F.O.G.A., your Honor.

Examiner Averill: Yes. Where and when.

A. Conferences—many conferences between the date of . May 4 and the date of this letter.

By Mr. Haycraft.

Q. Where? A. At the offices of the Guild; Mr. Greenebaum's office, I think, and in luncheons over the table. I 10790 remember one in particular between Mr. Golby, Mr. Rentner and myself at the-at the Ritz, I think it was.

Mr. Post: Do you not mean Post?

The Witness: I am sorry, Mr. Post and Mr. Rentner.

Mr. Weisman: Wait a moment

The Witness: At the-at the Ritz-Carleton, I think it was.

By Mr. Haycraft.

Q. Now, at these conferences, did either Mr. Rentner, Mr. Post, or Mr. Golby- A. It was not Mr. Golby.

Q. -any three of them, give any explanation why the arrangement or agreement that you had with them with respect to leniency was not to be made public?

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Mr. Weisman: No. no. He said "in words or substance."

The Witness: Thank you, sir-said in words or substance that the Guild had now signed several thousand retailers. I do not know whether he had said six, seven or eight, but in the neighborhood of

several thousand—and that obviously since we only represented 1,700 retailers he did not want to have anything appearing on the records anywhere that he had ever agreed, at least in that year, that there should be any exemption for low price merchandise. Is that complete? Does that answer it?

By Mr. Haycraft.

Q. Yes. I want to make clear on the record, if I can, Mr. Examiner, what, how—

Mr. Weisman (interposing): "What, how"? Mr. Haycraft: I will strike that out.

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By Mr. Haycraft.

Q. I would like to ask the witness to explain to the Examiner, and for the record, as to what would be needed in the way of protection on a \$10.75 cost line—

Mr. Weisman: Objected to-

By Mr. Haycraft.

Q. \$10.75 manufacture cost line.

Mr. Weisman: It is incompetent.

The Witness (continuing): If \$10.75 manufacturers are to be given protection by the F.O.G.A., complete protection, as they propose to do, it would be necessary for retailers to return copies at all price lines even down to a dollar or less—

Mr. Feldman: 50 cents.

The Witness: 50 cents.

Examiner Averill: Now, wait a moment, let the witness testify.

The Witness (continuing): —in order to cooperate properly. And that was impossible at the

time, and that is why leniency was asked for of the Guild, the leniency that I have been talking about ever since-

Examiner Averill: Yes,

The Witness: —the meeting of May 4.

Examiner Averill: Yes.

By Mr. Haycraft.

Q. Why is that so?

Mr. Weisman: I object to this. He just said why.

Examiner Averill: What he means is this—one moment. You mean by saying it was impossible to get that, that the low-price retailers-

The Witness: The low-price manufacturers.

Examiner Averill: The low-price manufactur-

The Witness: Yes.

Examiner Averill: -would not be willing to do 80?

The Witness: The low-price manufacturers were not equipped to do so with designing staffs, see?

Examiner Averill: Yes.

The Witness: Were not equipped to do so.

Examiner Averill: Well-

The Witness: They did not have it, but retailers had to have merchandise, you see, so that here we 10707 would be in a position of having to buy merchandise that we knew we would be asked to return, because there was none other than that type of merchandise offered, do you not see?

Examiner Averill: In the low prices?

The Witness: In the low prices. Practically everything is a copy of something that is better, emulated, or copied, or adopted, or something, from

something that is better, in the low-price ranges, and they were not equipped in any way whatsoever, see, to give us merchandise that were not copies, or, I should add to that, except in a very slight degree. You see, they were not equipped to give us copies—

Examiner Averill: Which could be sold at the

low prices?

The Witness: Which could be sold at the low prices, in those brackets where 83 per cent. of the piece units of the merchandise manufactured in the United States is sold, 83 per cent. of the total production of the United States, on or about the year 1935 was below \$6.75 cost, most of which were copies, and produced for the mass consumption in this country. Does that explain it, your Honor?

Examiner Averill: It gives us your views; that is what I was trying to get.

The Witness: That is right, those are my views. Examiner Averill: That is right; yes.

By Mr. Haycraft.

Q. Now, with respect to cost lines above \$10.75.

Mr. Weisman: Judge, is this not a good time to adjourn, it is 12.30.

Examiner Averill: Is it 12.30? Well, let us finish with this subject.

The Witness: What is that?

By Mr. Hayeraft.

Q. What was the situation with respect to cost lines above \$10.75, as the plan originally started when you first co-operated with the Guild? A. Well, for the price lines above \$10.75, we felt—I felt that we could co-operate down to and including \$10.75, and that was originally, and in the year 1935, I felt that we could co-operate down to and

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including \$7.75, since \$7 and \$8.75 had been added subsequent to the prior—as price lines in the market—they had been added as price lines in the market subsequent to June, 1933. That is, there may have been a very few, but very few price lines at \$7 and \$8 during 1933; but in 1935 quite a few had been added, and we felt—I felt that retailers can go along down to and including \$7.75; that is, to return copies down to \$7.75, but not to co-operate, that is, on returning copies of \$7.75. Is that clear?

Examiner Averill: Yes, I see what you mean.

By Mr. Haycraft.

Q. In other words, if a garment was sold to you, to one of your member stores, at a cost of \$8.75, and it was a copy of a dress manufactured by a Guild manufacturer, of, say, wholesale cost of \$20, did you believe that the \$8.75 garment should be returned as a copy? A. Yes, we felt—we felt that it was practical, because the market was more equipped with designing staffs at that price, you see, than in the lower brackets, and, for that reason, the instances would be less, because in above \$6.75 the relative volume of pieces sold in the United States is small, see? And the number of instances that we would be called upon to make returns are relatively few; but when you go below \$7.75 you get into a tremendous volume of transactions where the mass population of the United States are served, and with whom we do business.

Q. That would include the basement stores? A. Basement stores, upstairs stores, budget shops, and all of that type, chain stores, mail order chains, and all of that category who previously did their business in merchandise, or did their business, up to this year, in merchandise costing up to \$6.75.

Mr. Haycraft: Do you want to take a little recess?

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Examiner Averill: Yes, sir. Gentlemen, it is now half-past twelve. We will adjourn until 2 o'clock, unless you want to come back sooner?

Mr. Martin: No, sir; 2 o'clock will be fine.

Examiner Averill: All right.

(Whereupon, at 12.32 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION-2 P. M.

Examiner Averill: Proceed.

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H. O. BERGDAHL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Bergdahl, did you present your views and your opinions to Mr. Rentner and other officials of the Fashion Originators Guild of America at the time you had the discussions with respect to the activities of the Guild during 1933, 1934 and 1935?

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Mr. Weisman: I object to that as having already been answered three or four times on three or four different occasions.

Examiner Averill: I am rather inclined to think it is already in evidence, but he may say so again.

A. Yes, I did, from the beginning to the end, as I have stated previously.

By Mr. Haycraft.

M. Post, the present executive director of the Guild? A. Well, I could not tell you. I have known Mr. Post for several years, not intimately until the last three or four, but for several years I have known him in the industry from his retail activities.

Q. Did you have any conversation with him in June, 1933, with respect to the Guild particularly?

Mr. Weisman: I object.

Examiner werill! Overruled.

Mr. Weisman: May it please your Honor, let me call your Honor's attention to the fact of the inherent vice in this question, because the evidence clearly shows that Mr. Post was not with the Guild in June, 1933.

Examiner Averill: They may have discussed it,

anyhow.

Mr. Weisman: Suppose they did, what relevancy or competency has it on direct examination?

Examiner Averill: I do not know, but we will see what he says. Objection overruled.

Mr. Weisman: Exception.

The Witness: I would like to be specific in answering the question. Will you please read the question again?

(Question read.)

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A. As I recall it, I did.

By Mr. Haycraft.

Q. Can you give me the approximate date? A. On or about June & July 1, somewhere in that neighborhood, if my memory serves me correctly, I discussed with Al Post—in 1933.

Mr. Weisman: I object to what he said.

By Mr. Haycraft.

Q. What did Mr. Post do at that time? A. At that time he was merchandise manager for Mandel Brothers, Chicago, Illinois.

Q. Will you state the circumstances of that conversation and the substance of it?

Mr. Weisman: I object to that as immaterial. Suppose he did have a talk with anybody. Suppose he talked with somebody connected with the Emporium in San Francisco, or with Mr. Weber of Hudson Brothers in Detroit, Michigan, this witness is speaking with somebody who is unconnected with us. It would not be pertinent. He has done so, and now he wants to know the circumstances of that conversation and how this could be under any kind of circumstances used against us I cannot see.

Examiner Averill: If Mr. Post at that time was not connected with or affiliated with the Fashion Originators Guild of America I do not see that it has anything to do with this particular case. Objection sustained.

Mr. Weisman: Even Mr. Haycraft knows that.

By Mr. Haycraft.

Q. At that time were you active in the committee work of the A.B.O.?

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Mr. Weisman: I object.

Examiner Averill: This question is what this witness did. He has a right, a perfect right to ask him that. He just asked what this witness did at that time.

Mr. Weisman: We do not want to deal with "activities." If that is the purpose of this testimony he should tell us what he did because his statement

that he was "active" means nothing. That is a conclusion. One man might think that he was doing so much and was being quite active, when another might think that a different set of movements constituted activity, and the third one might think that was not active at all on the part of either one of them, and it gives you no consensus as to what might actually mean "activity" as being anything definite. What this man did is one thing. If he will tell us what he did then we can tell whether that is cotive or not.

Examiner Averill: Overruled.

Mr. Weisman: Exception.

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A. Well, I was still chairman of the committee. such, I was active in conversations with the Guild, the F.O.G.A. You have reference to 1935?

By Mr. Haycraft.

A. No, I was not. There was no A.B.O. at Q. 1933. that time.

(The letter heretofore marked for identification Commission's Exhibit 906, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Mr. Bergdahl, what was the occasion of sending out 10815 that letter?

Mr. Weisman: I object to that. Now, after we have gotten through getting this in, the vice of this becomes more particularly apparent because after he gets this fetter in, which in itself is incompetent, he is not satisfied with the letter and we must assume that all, under our theory of law, that ante-

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dates the letter is entered into the letter, and the reason for the entry into evidence of the document is, I still think, are very dubious of probity, and I think we all know that after he gets the letter in he should stop there, but no, he is not satisfied with that, but he now tries to get in crabwise information now which he says was the occasion for sending out the letter. This is certainly a pari pateric presentation of words and letters and things of that sort in evidence, and I think it is highly improper.

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Examiner Averill: I am inclined to agree with you. The paper on its face states the occasion for sending out the letter. There is no use of his repeating what is contained in the first paragraph of the letter. That shows the occasion and what it arose from.

Mr. Haycraft: I desire to know beyond that.

By Mr. Haycraft.

Q. Did you have any discussions with any official of the F.O.G.A. with respect to sending out this letter to the members of the A.M.C.? A. May I refresh my memory from looking at that letter?

Q. Yes. A. I did.

Q. What was it?

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Mr. Weisman: •I object as incompetent, immaterial and irrelevant.

Examiner Averill: Overruled. Mr. Weisman: Exception.

A. I discussed the subject of returns at that time with both Mr. Post and Mr. Rentner.

By Mr. Haycraft.

Q. What about the letter? Did you say anything to them about sending out this letter to members of the A.M.C.? A. No, I do not recall that I did. I do not know whether I did or not.

Mr. Weisman: May I ask that the prior question and answer be stricken.

Examiner Averill: Denied. Mr. Weisman: Exception.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 907 for Identification and ask if you can identify that as an original letter from Mr. Post to yourself under date of October 8, 1935?

A. Nenn

- Q. I will show you Commission's Exhibit 908 for Identification and ask you if you can identify that as an original letter from Mr. Post to yourself under date of October 9, 1935? A. Yes.
- Q. The pencil notations in the upper lefthand corner, were they on it when you received it? A. No, they were placed on there by myself afterwards.
- Q. I show you Commission's Exhibit 909 for Identification and ask if you can identify that as a letter and form attached to Commission's Exhibit 908 for Identification, when you received it? A. They were on there; yes, sir.
 - Q. Dated October 4, is it not? A. It is.
- Q. Did you receive these exhibits for identification in the ordinary regular course of business? A. I did.

Mr. Haycraft: I offer in evidence Commission's Exhibits for Identification, 907, 908 and 909.

Mr. Weisman: No objection.

(The paper heretofore marked for identification Commission's Exhibit 909, was marked as an exhibit and received in evidence.) 10820

By Mr. Haycraft.

- Q. Referring to Commission's Exhibit 907, reference is made to the Retailers Research in the first paragraph; what is the Retailers Research? A. I identified and defined it as being one branch of the A.M.C., the non-selling activities in the department stores of the retailers—it heads up in New York in the general status of the non-merchandising activities.
 - Q. It is a part of the A.M.C.? 'A. It is the A.M.C.
- Q. Had you had any conversation with Mr. Post prior to October 8, 1935, that prompted him to send you that list, sir? A. Well, I think Mr. Post volunteered this information to me as the result of conversations on returns.
- Q. In other words, you had no previous conversation about any specific returns? A. We had plenty of conversations about returns, I did with Mr. Post, aspecially as to the amount of them because I did not know how much they were, anyway, and he said he would show me, he said he would prove it to me that they were not very much, and he sent it to me so that I would know about it. I think it was voluntary on his part as the result of our conversations.
- Q. What action, if any, did you take upon receipt of this October 9, 1935, either in the capacity as merchandising manager of the Associated Merchandising Corporation, or chairman of the F.O.G.A. committee of the A.B.O.? A. We discussed this at our weekly meeting.
- Q. Who is "we"? A. The A.B.O., Associated Buying Office members.
 - Q. Did you take any other action?

Examiner Averill: What was the action?
The Witness: We agreed among ourselves that
this group was fairly representative of the market
in which Mr. Post, or of which Mr. Post discusses
in that letter, and that we should help to get these

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manufacturers into the Guild. It was part of the program of getting them all together so we could force them to come along. We were guilty of forcing it just as much as they were, and I will admit At freely.

By Mr. Haycraft.

Q. What did you do in order to bring that about? A. Why, I think I went so far as to go with Mr. reenebaum, I believe at the invitation of some of these manufacturers. here to a dinner meeting to express my personal views to these people, and as far as I understand it, and Mr. Greenebaum understood it, the views of the A.B.O., re- . 10826 garding the question of this group becoming members of the Guild:

Q. What did you tell them at that time at that dinper

Mr. Weisman: I object. He has told us his views. He has told us what his views were. He .. probably told the meeting his views. Did you give the meeting the benefit of your views on this subject? . »

The Witness: I expressed to that group the opinions I had regarding the F.O.G.A. on the question of membership, and as far as I could see what the retailers were thinking about it. I, however, expressly stated that we could not commit the retailers but we could state what we thought that they believed, or would do.

By Mr. Haycraft.

Q. What did you tell them your views were and why did you tell them that you thought the retailer knew about it-I withdraw that. What did you tell them that you thought the retailer would do?

Herbert L. Bergdahl-For Commission-Direct.

Mr. Weisman: It does not do me any harm. I am glad to hear that Mr. Bergdahl was in favor of this.

The Witness You knew it. You knew it. Examiner Werill: That is all right.

Mr. Weisman: I had always gathered that he was against this particular thing, and I am delighted to know that he was for it.

The Witness: You must have known it. Examiner Averill: Objection sustained.

By Mr. Haycraft.

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Q. Mr. Bergdahl, in this letter from Mr. Post to you October 9, 1935, he states: "Will you kindly present this matter to your membership and advise us when it will be convenient to go into the matter more thoroughly?" Did you do that? A. We took it up with our membership and advised the Guild, I believe, verbally. I cannot say that we wrote a letter.

Q. What did you advise the Guild? A. We advised them, as I have already stated, that we thought this list of manufacturers was fairly representatives of that part of the industry, and I—that they thought—and I thought that they cught to go ahead and try to take them in as members, and that we should help them to do so because then it had reached this stage of the game where we felt we had to get these low-end manufacturers in if we were going to survive, and if our business was going to live in the low end we had to get all of the others in with us. We were in a miserable state of affairs and liked to have some company, if you please.

Q. What was done, Mr. Bergdahl, with respect to the agreement between you and Mr. Rentner as to the matter of leniency in return of goods on the part of retail dealers after the \$6.75 group of manufacturers became members of the Guild in October, 1935?

Mr. Weisman: I object to this question as having already been answered at least once, and possibly twice, and I object to its being answered again on the ground that it unnecessarily adds cost to the respondents in this case, and it is simply a reiteration of the same thing over and over again, and it seems to me that we are just chasing ourselves around in a circle.

Mr. Haycraft: Is it necessary to answer that? Examiner Averill: What is the situation?

Mr. Haycraft: It has not come up to this point in my examination. I have taken this as a historical presentation of this whole situation. I have come how for the first time to October, 1935, and I have not been there before.

Examiner Averill: Are you referring in this question to these parties whose names are shown on Commission's Exhibit 909.

Mr. Haycraft: Except those parties that became members of the Guild.

Examiner Averill: Such of them as became members.

Mr. Haycraft: Yes, up to this time there was a return of goods, and I am asking whether there was any variation in it.

Mr. Weisman: Why don't you ask him the conversation as he had it between so and so, and what he said and what the other fellow said, and I will have something concrete. These omnibus shotgun explosions out of the window in the hope of hitting a butterfly are impossible to properly cross-examine upon. I have no objection to putting the facts before the Court.

Examiner Averill: Mr. Bergdahl, please tell us in regard to the particular firms you know what 10832

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they may have told you about, or can you give us your knowledge as to the entire situation—

The Witness: I do not quite catch that, your Honor.

Examiner Averill: Mr. Bergdahl, tell us, please, now—let me state/this so you will understand it. In regard to the particular form, that you know what he is talking about now, what his talking about now, what his any, action was taken, and if so, what action it was after this list, Commission's Exhibit 909, of parties had become members, or such of them as had become members, what was the action, if any, that was taken?

The Witness: I do not understand the question, your Honor.

Examiner Averill: Go ahead.

The Witness: Dunderstand the problem very well, your Honor, and I think you misunderstood the question, your Honor, that Mr. Haycraft had in mind. I understand the problem so well, your Honor, that I can peretrate it, I believe.

Mr. Weisman: I ask that the question be properly reframed so that I can understand it, because I do not understand it, and the witness says that your Honor does not understand, and I am sure that we do not either of us understand it and something should be done about it. I must object to the present situation. I, therefore, object to the witness answering a question which neither the Court nor counsel for the respondent understands.

Examiner Averill: I think that the witness can tell us what the facts are, and after all, all that we want are the facts, and after he gives us the answer I will strike it out if necessary. I think that would be the best way to proceed.

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Mr. Weisman: In the difficulty that we are a faced with now, it would seem to be one possible way out of this maze.

The Witness: I will try to enumerate as briefly as possible the events which followed the taking in of these manufacturers.

Examiner Averill: Go ahead.

The Witness: The admission of these manufacturers into the Guild.

Examiner Averill: That is, those on this list. Commission's Exhibit 909, who later actually became members.

The Witness: Yes, sir. Where was I, then?

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Q. (Answer read.) A.—entered into a mutual understanding that there should be more stringent returns, or more enforcement of the return policy on the low end as far as retailers were concerned; that shoppers would become more watchful of low-end merchandise, and more and more, as time went along, no period or no limit date was set, but increasingly as time went along there was to be a greater degree of co-operation by the retailers who handled low-end merchandise with the Guild policy.

Now, that resulted in some stores feeling this policy established by the Guild more than others, particularly those who were more aggressive in the sale of low-end merchandise, and particularly those who had smart buyers who knew how to fix so called "hot numbers" that were tear or somewhere similar to copies of styles that were anufactured by the Guild members, and one such store I remember in particular which called for some help——

The Witness: Just cross out that last statement, beginning with "one such store." One of the problems—when these return requests were made, as far as A.M.C. stores were concerned I could call

ap Al Post on the phone, or Jack Goldston or Mr. Golby and talk it out with them and sometimes they would see my point, and other times they did not, and generally we could get together on something and there was an understanding. would either return the dresses or they would state what could be done. However, Mr. Post said: "You know this had to be more and more strengthened, and there has to be more and more returns, you cannot get too many excuses in here, or too many exceptions." I said, "I understand that." And then Mr. DuBriell called me on the telephone, he is the vice president of the Associated Dry Goods Corporation, and he was at that time in charge of their New York office and they were members of the A.M.C., and he said, "Bergdahl, you have got to help me. I cannot live under this policy of returning all that the Guild shoppers are asking us to do, particularly in McCreery's. The have good buyers down there and they have a lot of hot numbers, and they are asking us to return them." So, "Will you see," he said; "if you can not get Mr. Post and Mr. Rentner and let's sit down and talk this out," so we did and Mr. Post was kind enough to come over to our office with Mr. Golby, I believe, or Mr. Goldston, I am not sure which one it was, but I feel quite sure it was not Mr. Rentner, but I know Mr. Post came over, and Mr. DuBriell and myself, and I think Mr. Greenebaum was there, and we decided that the returns should be limited to an extent since all stores could not be asked to return too much even if it were true at that date. So Mr. Post agreed with me in good faith, and I think Mr. Rentper approved it subsequently, and the board approved

it subsequently that if any store returned in any

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given month 5 per cent. of the stock it had in any given department, that would be considered sufficient co-operation. If, on the other hand, they wanted to consider their whole dress stock consisting of all departments, including the inexpensive as well as the better dress departments in the store, the figure of 3 per cent. would be figured substantial co-operation, and once that figure had been reached, or either of those figures, whichever the store wanted to take as its basis in any given month, then that store would be given, or would be giving sufficient co-operation that month, and would not have to return any more dresses unless they chose to do so. That was the spirit of leniency that existed between us at that time.

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Mr. Weisman: What time was that? The Witness: October, 1935.

(Whereupon, at 4.20 o'clock P. M., November 20, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway, New York, New York, November 23, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same Appearances.)

By Mr. Haycraft.

Q. Mr. Bergdahl, subsequent to December 5, 1935, did you have any further conversations with the executives

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of the F.O.G.A. with respect to the policy discussed in Commission's Exhibits 918 and 920?

Mr. Weisman: Now, just a moment. We have had it once, Judge, before these exhibits went in. He told us at length.

Mr. Haycraft: I said any more from now on.

Mr. Weisman: Then ask him, in addition to what he has already told us, whether there is any more. You have asked him subsequent to December 4, and he has testified fully and at length already as to conversations. Now, what you mean, if he has anything further to add. If that is it, I have no objection; but I do object to a reiteration.

Mr. Haycraft: I have not asked for a reiteration.

Mr. Weisman: Oh, yes, you have.

Examiner Averill: Read the question.

(Last question read.)

Mr. Haycraft: I call attention to the word "further," Mr. Examiner.

Examiner Averill: It is all right. The objection is overruled. Just say "yes" or "no" first.

A. Yes, I think so. I recall that we had conversations, Mr. Post and I did:

By Mr. Haycraft.

10848 Q. What was the

Mr. Weisman: May we have the date?

The Witness: I could not give you the date, sir.

By Mr. Haycraft.

Q. What was the substance of those conversations? A. Well, it is hard for me to state exactly what they were, except that I told Mr. Post that I thought he should not

press the returns issue too much, too strongly, since, if he did, it would precipitate a break in our relationships, since we could not possibly go along any more than we were.

- Q. What did he say? A. At that time—at least, at that time.
- Q. What did he say as to that? A. Well, he let me know that it was the Guild's policy to expect increased co-operation. This was a—I think I have repeated this before, but this was a progressive co-operation that was supposed to increase as the months went by, and every time we had a return to adjust, that we had some objection to, in conversation with Mr. Post this whole subject would come up, and even—if I was called over to the office on a style piracy hearing, the subject has come up, and, as I recall it, we did have one conversation in particular in the office. I think it was in January.
 - Q. 1936? A, 1936.
- Q. What— A. In which I stated my views to Mr. Post and he stated his.
- Q. Did he, during those conversations, tell you that if the stores did not co-operate as he expected them to, that they would be red carded? A. Well—

Mr. Weisman: I object to the form of the question. There is not any testimony that Mr. Post expected them to co-operate "as he expected them to." The witness has said that Mr. Post expected increasing co-operation on the matter of returns, and that was all the testimony that we have had on that.

Mr. Haycraft: The is what I refer to.

Mr. Weisman: Well, then, the question should be made to refer to it, not to the co-operation that Mr. Post affixes.

Mr. Haycraft! The question is plain enough.

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Mr. Weisman: All right, I think it is now. Examiner Averill: Read the question. (Last question read.).

Examiner Averill: He may answer that question. Exception noted. Go ahead.

A. He told me specifically that Mr. Charles Taylor was a bad actor, or a bad boy, or words to that effect: that he was-he was watching him.

By Mr. Haycraft.

be red carded."

Q. With what store is Mr. Taylor connected? A. Strawbridge & Clother, Philadelphia. 10853

Q. Did he tell you at any time that he was going to red card Strawbridge & Clothier before he did it? A. He did say he was going to red card-he was going to red card Strawbridge & Clothier.

Q. When did he say that? A. When the—the night that the F.O.G.A. N.R.D.G.A. had had a meeting in the N.R.D.G.A. offices Post called me at his home—at my home, and I was not there, so I called him late in the evening, and he said, "I have decided to send a letter to Strawbridge & Clothier telling them that if they don't sign the new contract, the new agreement, they are going to

Q. What did you say to that? A. I said, "Well, Mr. Post, it is your business; you are doing it, I am not, What 10854 do you want me to do about it?" He said, "Well, I am just telling you." I said, "All right, I guess there is nothing I can do about it." Says, "O.K."

H. O. BERGDAHL resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.'

Q. How long after this first conversation did you learn that Strawbridge & Clothier was red carded? A. I do not have anything here that calls it to my mind.

Q! Do you have anything you can refresh your recollection from now? A. As I said before the recess, I think I have in the papers of the firm, the papers from Strawbridge & Clothier, indicating that there was such a meeting and I believe it was about February 4. I had intended looking that up during the luncheon hour so that I could tell you, but I have not been able to do so; but as I recall it, it was about February 4.

Q. At that time and on that occasion did Mr. Post tell you why the Strawbridge & Clothier store was to be red carded? A. Yes, he did tell me so.

Q. Why did he say they were to be red carded? A. Because Mr. Taylor had refused to divulge the name of a manufacturer at the Guild shopper's request. I should say he had refused to divulge the manufacturer, the manufacturer of an alleged copy or copy's name.

Q. Did you have any further conversation with Mr. Post with respect to red carding any member of the A.M.C.? A. No—well, at about this same time Mr. Post, in February—not February, but in January, Mr. Post did tell me that the J. L. Hudson Company was—

Mr. Weisman: Chiseling?
The Witness: Not chiseling.
Mr. Weisman: Cheating?
The Witness: Not cheating.
Mr. Haycraft: I object.
Examiner Averill: Proceed.

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Herbert L. Bergdahl-For Commission-Direct.

A. That the J. L. Hudson Company seemed to misunder stand the agreement that existed between Mr. Post and myself and that they wanted so many exemptions, as he stated it, that something would have to be done about it.

Examiner Averill: This was in 1936, January, and February, 1936.

By Mr. Haycraft.

Q. Did you later learn that other members of the A.M.C. had been red carded?

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Mr. Weisman: We have now a statement of February 4, and now we have jumped back to January, and another time in December, and may I ask what is referred to by this "later"?

(Question read.)

A. I did.

Mr. Weisman: Wait a minute. I have an objection. I do not know what this "later" refers to.

Examiner Averill: I think it would be well to give some date. It is all mixed up now. We do not know when it refers to.

Mr. Haycraft: My previous question referred to that date, and therefore we have to be accurate.

The Witness: May I explain my last answer-Mr. Weisman: Wait for a question.

Examiner Averill: You may explain it.

The Witness: The Examiner asked what year, so I said these conferences—he asked me about year what I said these conferences about red carding took place, and I will say that they were all in January and February, 1936.

10862

By Examiner Averill.

- Q. You testified, as I recall your conversation, that one or about February 4, 1936— A. Yes, one of them then.
- Q. The next conversation you referred to was in January, 1936? A. No, no—oh, yes; oh, yes; he asked me about another conversation.
- Q. Yes. A. I said on or about the same time. You know I had no calendar, so I am trying to be honest and explicit and I said on or about the same time.
 - Q. You then went back to January, 1936? A. Yes.

Examiner Averill: Now I want to ask counsel when this last question was directed to the witness did you refer to January, 1936, or did you refer to February, 1936, or tell us what date you are talking about.

Mr. Haycraft: He made the statement February 4, so it would have to be after that. I do not see what wrong there is in the question, or what harm there is.

Examiner Averill: There is no harm in it, but it would save a lot of time if we would go ahead and state when it was.

Mr. Hayeraft: He certainly would be talking about that. Certainly it would be subsequent to January or February, so there is nothing particularly wrong with it.

Examiner Averill: I certainly did not say there was anything particularly wrong with it, but certainly if it were more explicit, if you will just state the date you mean, it would save a lot of time.

10863

By Mr. Haycraft.

Q. After February 4, 1936.

(Previous question read.)

The Witness: I do not understand.

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By Mr. Haycraft.

Q: After February 4 1936, did you learn that other members of the A.M.C. had been red carded? A. Yes.

Q. How did you learn of it? A. I read it in "Women's Wear."

Q. You read it in "Women's Wear"? A. Yes.

Q. Prior to February 10 or February 11, 1936, did you know that Strawbridge & Clothier had actually been red carded? A. We learned it on February 10, I believe, 10 or 11. I had been told that they would be if they did not sign a new declaration, but we did not know that they were told—we did not know this definitely until this announcement came out.

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Q. Had you been informed by anybody from the Guild, or the F.O.G.A., that the R. H. White Company had been red carded? A. No.

Q. Had you been told that they would be red carded?

A. I cannot say that I was told that, no.

Q. Did you learn of any other stores of the A.M.C. being red carded or that were to be red carded?

Mr. Weisman: Do you mean on or about that time, or when do you refer to?

By Mr. Haycraft.

Q. Subsequent to that time. A. Did we learn?

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Q. Yes. A. We learned through announcements in the press that they were red carded.

Mr. Haycraft: I ask that this be marked for identification.

(The paper was thereupon marked for identification Commission's Exhibit 922.)

By Mr. Haycraft.

- Q. I show you Commission's Exhibit 922 for Identification and ask you if you can identify that as an announcement in the press referred to in your last testimony? A. No, it is not the one I had in mind. I think I had in mind the one of February 18.
- Q. You did not have this one in mind? A. No, I think this is not the one I had reference to, but the one I had reference to is the one in which all the stores were red carded, which I think is dated February 18.
- Q. This is dated February 14. A. Yes. There were one or two, and then there were three or four more afterwards, and finally the whole group of sixteen.
- Q. When did you learn that Bloomingdale's, Hudson's, Kern's, the Hub of Baltimore, were red carded? A. When we read it in the press.
 - Q. On or about February 14, 1936? A. Yes.
- Q. Between February 10 and/or February 11, 1936, and February 18, 1936, did the A.M.C. stores take any action which was communicated to the Fashion Originators Guild of America with respect to further co-operation with the Guild? A. Between February 11 and February 18; is that your question?
 - Q. Yes. A. Yes, we did.
- Q. Was there any meeting of the A.M.C. held, officials of the A.M.C.? A. No, not that I recall.
- Q. Subsequent to February 18, 1936, had your organization, the A.M.C., made any attempt to secure merchandise from the members of the F.O.G.A. with whom you had been dealing prior to that date?

Mr. Weisman: Objected to as incompetent, immaterial, irrelevant, what somebody else did. The best testimony would be as to the people who did it. Mr. Feldman: They did testify.

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Examiner Averill: The objection is overled.

Mr. Weisman: Exception.

A. Yes, we did attempt to get merchandise for our stores.

Mr. Weisman: I ask that the answer be stricken as irresponsive.

Examiner Averill: The motion is denied. Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What success did you have in your attempts?

Mr. Weisman: Objected to, as to the form of the question, on the ground that it is incompetent, irrelevant and immaterial, calling for a conclusion of the witness.

Examiner Averill: The objection is overruled.

Mr. Weisman: Exception.

Examiner Averill: Yes.

Mr. Weisman: May I have my exception, Judge? Examiner Averill: Certainly, certainly, to all of it.

A. Why, we did not get any merchandise.

Q. Mr. Bergdahl, have you had occasion in your line of duty to make a study of the market for ready-to-wear garments, dresses, women's and misses' dresses, coats and suits, to ascertain the available sources of supply in the various lines of manufacture, of members of the Guild and non-members of the Guild, to enable you to testify as to the percentage of the market that is controlled by members of the Guild as compared with non-members of the Guild?

Mr. Weisman: Just a moment. I object to that question on the ground it is incompetent, immate-

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rial and irrelevant, no proper foundation laid, calls for a conclusion of the witness, is not in proper form and—I think that is enough.

Examiner Averill: Mr. Bergdahl, will you kindly answer the question, because the objection is overruled and exception noted for counsel? You may answer that question as to whether you think you can express an opinion in regard to these matters.

By Mr. Haycraft.

Q. First, whether he made a study. .

Examiner Averill: Made a study of them.

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A. I did make a study-

Examiner Averill: Yes.

A. —of the market, to find out where we could get merchandise for our stores.

Examiner Averill: From both members of the Guild and non-members?

The Witness: Yes.

Examiner Averill: That is part of that uestion. That is why I asked it.

By Mr. Haycraft.

Q. Now the second part of it.

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Examiner Averill: Now, did you make a study of the percentages?

Mr. Feldman. Has he made previous studies of that character?

. A, Well, as a result of our study of the market-

Mr. Weisman: Just a moment. I object to that, "our study." He was asked about his study.

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Examiner Averill: Just use it as yourself, please.

Mr. Weisman: Well, if the did it himself, Judge. Examiner Averill: Well, I——

A. I did not do it myself, Judge. I am in charge of a division of people whose work it is to give me information regarding the market, if I want it, and give our stores information regarding the market, and they—I discussed this subject with them to find out where we could get merchandise for our stores in the market.

Examiner Averill: Yes.

10877

The Witness: And from them—from knowledge, discussions and from the work and effort we made to get merchandise for our stores I think I can give an opinion as to percentages.

Examiner Averill: I see The Witness: Maybe—

Examiner Averill: That is all right. What is the next question?

(A paper was thereupon marked for identification Commission's Exhibit 941.)

Examiner Averill: Off the record.

(There was a discussion off the record.)

By Mr. Haycraft.

10878

Q. Have you prepared a memorandum for showing the comparative 1935 dollar volume of members, affiliates and protective affiliates, of the F.O.G.A. as against the entire industry?

Mr. Weisman: I object to the question as incompetent, irrelevant and immaterial unless he shows what he bases that upon. A man comes in and says, "I prepared something, I wrote up a fairy tale and I am now putting it in evidence"; the fact that he

made this up, that he wrote himself a nice story, whatever it is—I have not seen it—would not make him competent.

Examiner Averill: Off the record.

. (There was a discussion off the record.)

Examiner Averill: On the record. Read the question.

(Last question read.)

Examiner Averill: The objection is overruled to that question. You may answer that question.

A. I prepared this memorandum.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 941 for Identification and ask you if that is the memorandum? A. That is.

Q. What was the basis of fact upon which you prepared this memorandum? A. Why, this is the result of collaboration between myself and information I gathered in the office and information gathered by Harris & Serwer.

Examiner Averill: Who?

The Witness: Harris & Serwer.

Examiner Averill: Who is he?

By Mr. Haycraft.

Q. Spell that name. A. Harris & Serwer, H-a-r-r-i-s & S-e-r-w-e-r.

Q. Who are they? A. They are the agency that does publicity work, investigations, and so forth.

Mr. Weisman: It is an advertising-

The Witness: Research.

Mr: Weisman: It is an advertising agency.

The Witness: Research. I think they have been quoted by the F.O.G.A. as an authority, and so forth.

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Mr. Weisman: You are mistaken about that like you are about a great many other things. I ask that this be stricken out from this witness' answer, that he thinks we have quoted them. We have quoted them as showing that they do not know what they are talking about.

Examiner Averill: Just a moment. This firm you speak of, are they accountants, public accountants?

The Witness: No, they are not.

By Mr. Haycraft.

10883 Q. Research bureau, are they not?

Mr. Weisman: They are nothing of the kind, Judge.

Examiner Averill: Let him answer.

A. They are a research bureau and I think they have a very good knowledge of the industry.

Mr. Weisman: It sk that that be stricken out. Examiner Averill: No. I am trying now—this is not evidence we are receiving now; we are trying to establish—it is in an endeavor to show that the sources upon which the witness relied and the sources to which he went to gain the information which enabled him to compare the statement that has been shown him. That is all we are after right now.

Mr. Weisman: But, Judge, it is clearly incompetent. You cannot pile hearsay on hearsay.

Examiner Averill: Not piling hearsay on hearsay. A man has a right to say how he gathered the information, and if it does not prove to be competent, why, then the paper will be thrown out.

Mr. Weisman: Thank you.

Examiner Averill: But he certainly has a right to state. You cannot possibly ascertain until you ask him.

Mr. Weisman: All right, all right.

Examiner Averill: He may have gone to the very best firm of accountants in the United States.

Mr. Weisman: Suppose he did-

Examiner Averill: That is all right. Please answer the question.

Mr. Weisman: -and that these accountants-

Examiner Averill: But he has a right to say so.

Mr. Weisman: Yes, but that would not make it competent, if these accountants did not have access to our books.

Examiner Averill: I do not know what they had. That is another matter; but you cannot do everything at once.

Mr. Weisman: All right.

Examiner Averill: You want to work the impossible. It cannot be done. If he did it the other way, you would say that was wrong.

Mr. Weisman: All right,

Examiner Averill: And you know it.

Mr. Weisman: I will restrain myself.

Examiner Averill: Off the record.

(There was a discussion off the record.)

(A paper was thereupon marked for identification Commission's Exhibit 942.)

Examiner Averill: Let us go on a little further to see what develops. To my mind that is sufficient.

Mr. Haycraft: I am coming to that.

Examiner Averill: All right, I do not want to hurry you.

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Herbert L. Bergdahl-For Commission-Direct.

By Mr. Haycraft.

Q. I show you a paper marked Commission's Exhibit 942 for Identification—

Examiner Averill: The same paper you are talking about?

Mr. Haycraft: No, that is the next one, Commission's Exhibit 942. In other words, it is the basis for this, one of the papers he used in preparing that Commission's Exhibit 941.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Read the last answer.

(Last answer read as follows: "A. They are a research bureau and I think they have a very good knowledge of the industry.")

(Thereupon the motion was read as follows: "Mr. Weisman: Fask that that be stricken out."):

Examiner Averill: The motion to strike is denice because this is not being received as testimony now; it is only being received as information that would enable us to determine whether the paper when offered, if offered, is competent. I do not know. I cannot tell until I know how it was prepared.

By Mr. Haycraft.

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Q. Do you know the way in which-

Examiner Averill: Off the record. (There was a discussion off the record.)

By Mr. Haycraft.

Q. I will ask you, Mr. Bergdahl, where you obtained the information upon which you base your estimate in this Commission's Exhibit 941 for Identification, under the column entitled "Members of affiliates and protective affiliates"? A. Well, I took the F.O.G.A. membership as of the time this was started, from the 1st of March, or thereabouts.

> Mr. Weisman: What year? The Witness: 1936

A. (Resumed) And asked Mr. Serwer to prepare a statement, if he could, on what the volume of business was for the respective categories in the industry. He told me he could give me that, and prepared it, and this is the summation of the figures that he gave me.

Examiner Averill: Yes.

10892

By Mr. Haycraft.

Q. Did you make any check of it from your own standpoint?. A. Yes, I have checked it, spot checked it, with manufacturers—with members of the F.O.G.A.

Examiner Averill: What do you mean by "spot checked"?

The Witness: Well, I mean that I have taken members of the F.O.G.A. whom I know and asked them whether or not they did so much business. I personally asked them.

Examiner Averill: Do you have with you or have available the papers, if any, that were submitted-I suppose they were in writing-by this firm you speak of to you, showing the detail?

The Witness: I have not got them with me, no. · These are copies here.

Examiner Averill: You mean they are copies here?

The Witness: Yes.

Examiner Averill: Might, I look at one of those a- moment?

Mr. Haycraft: Surely.

Examiner Averill: Just to see the form of it and let Mr. Weisman see the form of it.

Mr. Haycraft: I will be glad to turn these all over to Mr. Weisman and let him check it against his own records if he wishes. I am satisfied they have been having the same sort of a check made.

Mr. Weisman: No, we made an honest check

Examiner Averill: No, please.

Mr. Weisman: We made a proper check. This is what we did. Do not take this on the record.

Examiner Averill: Off the record.

(There was a discussion off the record.)

10895

By Mr. Haycraft.

Q. Mr. Bergdahl, do you know Mr. Jack Goldston of the F.O.G.A.? A. Yes, sir.

Q. As far as you know in your contact with the F.O.G.A., what is the position he holds and what does he do? A. He is in charge of the style policy and enforcement activities, as far as I know.

Q. Have you had any contacts or conversations or conferences with him with respect to style piracy enforcement on the part of the Guild? A. When?

Q. During the year 1935? A. Yes, sir.

Q. When did you first have any contacts or conversations or conferences with him with respect to style piracy enforcement and under what circumstances were you first

contacted by him or did you first contact Mr. Goldston:
A. You mean Mr. Goldston?

Q. Yes. A. Why, when he first began the work. I think that was the early part of 1935 or late part of 1934. I cannot tell you exactly.

Q. What was the occasion of your contact with him?
 A. The occasion was the settlement of these disputes or

differences as regards copies, and so forth, between the A.M.C. stores and the Guild, and also when he would call me and ask me to sit on style piracy meetings, style piracy judging committee meetings.

Q. Did you co-operate with Mr. Goldston when called

upon to do so? A. Yes.

Q. What was the machinery that was set up by the Guild to determine whether or not an alleged copy was a copy? A. Well, should I go back to the beginning?

Q. Well, first. A. Well, when the retailers—at first, before there were shoppers, the Guild depended upon retailers to make complaints against each other on copies and bring them to the attention of the Guild, of the F.O.G.A., which would then investigate in some way to ascertain whether or not they were such copies and ask the offending retailers to make returns. Subsequently, they employed-Mr. Goldston and shoppers, retail shoppers. They shopped retail shops in several of the cities of the United States, beginning with the largest cities first, and then working down into the smaller cities whose duty it was to watch the style piracy activities. It was the duty of these shoppers to write the F.O.G.A. in the respective cities when they found such things, to represent the F.O.G.A. in the respective cities, as their representative, and to shop the retailers for copies and make reports to the local office of Mr. Goldston in New York here. Mr. Goldston would, when copies were called to his attention. by complaining retailers, or through the shoppers, or both, would investigate and if he thought it was a copy, after examining it, ask the retailers to return those copies. that time Mr. Goldston may have had some assistance from the manufacturers on these piracy committees before these committees were changed, but it was my understanding that Mr. Goldston did the work pretty much alone. In other words, he judged whether or not it was a copy but he may have had some assistance from the members of the

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Guild, the F.O.G.A. It was my suggestion, because of the complaints that I had from retailers from our A.M.C. retailers as well as complaints that I heard from the A.B.O. that the Guild should attempt to set up some kind of a piracy committee that would not be entirely of Guild executives or Guild members. I told Mr. Post at the time that I thought retailers were fair in objecting to having Mr. Goldston make decisions as to whether or not dresses were copies since no matter how unbiased Mr. Goldston might be, retailers would have the valid reason for having an alibi or for excusing themselves, and for finding a reason to differ with Mr. Goldston since he was paid by the Guild to do his work. I suggested that a style piracy committee should be composed entirely of retailers; and that there should be no F.O.G.A. members on these committees. Mr. Post agreed with me that that was a good idea and he submitted it to his membership. I think they were reluctant to give assent to that type of judging because they felt the retailers—a committee composed solely of retailers might be unfair to the Guild, but he finally did convince them that it would be worth a try-at least, Mr. Post told me that he convinced the members that this should be done. As a consequence, machinery was set up by which the F.O.G.A. could call upon some 200 or 250 buyers and merchandise men in New York department stores and New York resident offices for a revolving, so-called revolving style piracy committees. Does that answer your question?

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Q. I think so.

Mr. Weisman: May it please your Honor, I do not know if you followed that. I did not object, but it clearly shows it is not responsive, but if your Honor thinks it will help you to see the whole his tory of the matter, I am not objecting to letting the answer stand as it is.

Examiner Averill: I think it just goes to the history, it probably is not altogether responsive, but I think that it is to a certain degree responsive.

Mr. Weisman: May we have Mr. Haycraft ask when this arrangement was concluded?

By Mr. Haycraft.

Q. Please answer that. A. I asked if I should start at the beginning.

Q. Yes. A. This brings up to the fall of 1935 when this finally went into effect; I do not know just when in the fall, but some time during the fall.

Q. Did you serve on any of these piracy committees? A. Yes, on two or three occasions I did.

Q. Did any of your employees serve on those committees? A. Yes, they served from time to time.

Q. From your observation and your experience and the reports that you have from your own employees, has the Piracy Committee of the Guild, as it is now selected and constituted—I mean now since December, since the fall of 1935—an impartial and unbiased committee? A. I am sorry to say that I——

Mr. Weisman: Just a moment. May I have that question read?

(Question read.)

Mr. Weisman: I submit the question is wholly incompetent. I call your Honor's attention to the fact that the method of getting those committees together was suggested by this man. He is asking for a time, furthermore, when this man has not been working upon them as he has heretofore; there has not been that spirit of co-operation and he is too biased to make a fair statement. It is not Guild members; it is retailers. It is retailers who are used to judge.

10904

Examiner Averill: Read the question. (Question again read.)

Mr._Weisman: I submit that the question is incompetent, immaterial, and irrelevant, and calls for the conclusion of the witness.

Examiner Averill: He has been asked for his opinion, which is a conclusion, of course, and that is what we have to give on matters of this kind. I will overrule the objection; exception noted.

(Question again read.)

A. Why, they may be, but I think generally they are not.

10907 By Mr. Haycraft.

Q. What are the facts on which you base that conclusion? A. Well, when my buyers come back I always asked them what the dispute was about, if I was not at the F.O.G.A. office myself, and from those reports I learned certain things about this during the fall of 1935 because there were any of these hostilities, and Mr. Weisman talked about. I learned, for example—

Mr. Weisman: I submit that all of this is hear say. That the witness has ably demonstrated that what he is testifying to is not first hand. I now ask that all his answer be stricken out.

Examiner Averill: He has not reached the answer. He is now giving the date upon which he has based his opinion and upon which his opinion, therefore, is given. Certainly, counsel has a right to ask upon which basis his opinion is given.

A. I find that there were, or, rather, I found that there were two—in other words, if there were two better dress buyers, for example, on a committee of three, as against one inexpensive dress buyer, that the two better dress buyers might and frequently were inclined to favor their bet-

ter end—that is, the F.O.G.A. manufacturer, and that they would be tempted to vote against the non-Guild manufacturer, particularly if they had the dress in stock, it would be hard for them to be fair even to a near copy. Now, if there, were two inexpensive dress buyers on the committee; they very frequently—

Mr. Weisman: May I now object? I think it is now clear what the situation is to your Honor.

Examiner Averill: All of this thing is going in, as repetition, because I think it has already gone in here, and I think I can put my finger on the record at the point where it has gone in heretofore.

Mr. Weisman: He has been asked the question as to what he based his opinion upon, and he has gone far beyond that.

Examiner Averill: He is telling us so.

Mr. Weisman: May I most respectfully differ with your Honor in regard to that? I am sorry to differ with you, Judge, because the answer to that question would have to be "My buyers came back and told me so and so." And I say that would be hear-say because he is telling what they came back and told him, and we ought to have the buyers here to tell us what they came back and told him, and then we can interrogate them in regard to the matter. This completely shuts me off from any fair kind of cross-examination upon the matter.

Examiner Averill: But he is asking what was the information that influenced this witness.

Mr. Weisman: It would be clearly incompetent. You would have to bring the buyers here.

Examiner Averill: What the buyers told him is what affected his opinion. It is the effect produced upon the minds of the people; it is the effect produced upon the mental attitude, and he is giving us that, although I think it is all in, my objection to

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this is that this is all repetitious, this is all right in there already about the buyers on this committee, and how they sometimes came from different businesses and represented the low end or the high end, and that sometimes there were two of the better, and one of the lower, and they would vote one way and the other one would vote the other way, and then vice versa whether there were two of the low end on there and one of the better dresses; they would vote just the opposite. I do not mean to say that those are the facts, but that is in here just how the committee is made up from time to time, and you stated yourself that it differed every day.

Mr. Haycraft: Let the witness finish the answer, if your Honor please.

Examiner Averill: Objection overruled; exception noted. What was the question?

(Question read.)

The Witness: What was my answer to it? (Answer read.)

A. As against one better dress buyer they would be inclined to favor the copy since it would be to their interest to do so. At least, that was my experience with these committees.

By Mr. Haycraft.

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Q. Where did these committees hold their meetings? A. At the F.O.G.A. office generally, but not always. I believe at times they were held out of town, although that was not the original plan as it was originally arrived at

Q. When they were held in New York where were they held? A. As far as that is concerned, I think they were all held at the office of the F.O.G.A.; every one that I ever heard of, anyhow.

Q. Who selected the committee? A. The F.O.G.A. executives selected the committee.

Q. Who attended the meetings? A. Who attended the committee meetings?

Q. Yes.

Mr. Weismna? At this time, I would like to address myself to a motion to strike. The witness has finished his answer and I would like to make a motion to strike the entire answer and the questions relating thereto since he is now on a new query.

Examiner Averill: I think he is still continuing on the same thing, is he not?

Mr. Haycraft: I am still on the piracy commit 10916 tees and on the facts on which he based his opinion.

Examiner Averill: Counsel says he is still on the question of supporting his reason for his feelings as he has expressed himself in that regard.

Mr. Haycraft: That is correct, your Honor.

Mr. Weisman: Very well. Let us get over with it as sóon as possible.

A. They were attended by the retail members of the Guild as well as the executives of the F.O.G.A. who were in the office; it was held in their office, and manufacturers, the interested manufacturers could be present if they wanted to; not always at the committee meetings, but they were present-

> I ask that the latter part be-Mr. Weisman: stricken. He was asked who was present and now he is telling who can be present and he should be kept to those who were present, it seems to me under the question that was asked him.

> Examiner Averill: He is saying that some of them were present; but not always. You know some clases of people might be there at a cottain meeting, and not others, and others be there at a certain

meeting and others be absent; in other words, it changed around from time to time, as I understand it.

Mr. Weisman: Quite true, but this man said he attended altogether two or three and where he gets the knowledge to testify as to all of this I cannot understand. I know that he has testified that on one or two or three occasions he was there. Now, he is describing all of the meetings of these committees which were held, and they were held very frequently.

Examiner Averill: He is giving his general picture upon which he has stated his previous impres-

sion.

Mr. Weisman: I do not see how he can say what happened when he was not there.

Examiner Averill: He is telling us what ones were present, and, of course, different ones would be there on different days.

Mr. Weisman: Of course, if any body reads this record they would think that this man sat in on each and every one of these hearings, and that he knows what he is talking about, but unfortunately it is obvious that he has not been there, and it is simply a question of a witness who is only too willing to testify.

Examiner Averill: I think the whole thing to me is as clear as the noon day sun. I understand it very well.

The Witness: But they were-

Examiner Averill: Was the person from whom the alleged copy was taken present at the hearing?

The Witness: I said the interested manufacturers—from the retailer?

Examiner Averill: Yes,

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The Witness: No, the retailer frequently was not present, I mean the particular retailer that made the accusation, I do not recall that they ever were present, but they may have been; there was no proscription against anybody, anybody could be there, I guess, that wanted; they were held out in the open.

Examiner Averill: How about the retailer that was accused of having the copy-was he present? The Witness: Retailers were not accused, but manufacturers.

Examiner Averill: The retailer where the garment may have been found.

The Witness: No, they could be, but if they were out of town, they would not be or could not be, physically.

Examiner Averill: What officials of the F.O.G.A. were present?

The Witness: Any of them that were in the office could be present. They sometimes were held in Mr. Post's office, at which time he might be present if he happened to be there.

Examiner Averill: And how about the rest of the officials of the F.O.G.A.?

The Witness: Mr. Golby might be there, or Mr. Goldston, or any of the three might be there, or all three, or any two of them.

Examiner Averill: That is all I wanted to ask. I think I have it cleared up as far as I am concerned.

Mr. Haveraft: Shall I continue?

Examiner Averill: Yes.

By Mr. Haycraft. .

Q. What was the procedure that took place? procedure was to ask the committee to look over the10922

the retail committee to look over the dresses in question, or copies, whatever the case might be, or the suit or coat, and render a decision as to whether or not they thought one was a copy of the other. The committee would reach its decision and tell the F.O.G.A., or Mr. Goldston, what the decision was.

- Q. To your knowledge, were those decisions ever changed by officials of the F.O.G.A.? A. Why, not to my personal knowledge, but some of my buyers—
 - Q. Reported to you such? A. Yes.

Mr. Weisman: I object to what was reported to him.

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Examiner Averill: I think that is going too far. The people who reported anything of that sort should be the witness in this case. That is going too far. I have stretched it a good deal, but I cannot go quite that far.

The Witness: Of course, I have one instance where I discussed the matter with Mr. Goldsten in some detail, and the decision was changed.

By Mr. Haycraft.

Q. In what instance was that? A. It was in connection with some dress company versus somebody else; I do not think of the name just now. This particular Guild member—that was before they became members of the Guild, and it was a case in which a given committee went the other way and in which one of our buyers was a member, and the Committee made the decision that the dress was a copy. The manufacturer brought it to my attention, or, at least, it came to my attention, and I called up Jack Goldston, and I said, "Tack, in your own honest opinion, is that a copy of the dress in question?" And he said, "Well, frankly, I do not think it is." I said, "Yery well, why do you send it out as a copy, then?" He said,

"Well, I do not know, but that is the decision of the committee." I said, "Well, you had better see that that is changed because obviously this is unfair, and I am going to make an issue of it because it is not right." I think as the result of that there was some change in the decision. However, prior to that when the committee was in action they made two different decisions on that particular dress, which was subsequently brought to my attention.

Examiner Averill: Gentlemen, it is now 4.20, and counsel having asked for an adjournment at that hour in order that he may be present in New York before the United States Circuit Court, we will now adjourn to reconvene at 10 o'clock tomorrow morning in this room.

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(Whereupon, at 4.20 o'clock P. M., November 23, 1936, the hearing was adjourned.)

Room 901, 45 Broadway, New York, New York November 24, 1936.

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: EDWARD M. AVERILL, Examiner.

(SAME APPEARANCES:)

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PROCEEDINGS.

Examiner Averill: Gentlemen, whenever you are ready, you may proceed.

Mr. Haycraft: All right, Mr. Bergdahl, will you resume the stand.

H. O. BERGDAHL resumed the stand and testified further as follows:

Direct examination by Mr. Haycraft (continued).

Q. Mr. Bergdahl, based upon your experience and knowledge of the merchandising problems of the retail dealers in women's and misses' ready-to-wear garments, and, in your capacity as general merchandising manager of the A.M.C., and as chairman of the F.O.G.A. committee of the A.B.O., and taking into consideration all the facts that you have related in this proceeding as to the operations of the F.O.G.A. program, to curb so-called style piracy, please state your opinion of the effect of that program upon the retail dealers of women's and misses' ready-to-wear garments from the standpoint of their ability to obtain a supply of merchandise, and ability to sell that merchandise in competition with other dealers in the industry, confining your answer, first, to so-called spe cialty shops handling women's and misses' ready-to-wear garments, who are co-operating with the Guild by returning to manufacturers garments that are alleged to be copies of garments manufactured by the members of the Guild?

Examiner Averill: That is quite clear.

Mr. Weisman: That is all right. I have no objection.

Examiner Averill: Now, then, Mr. Bergdahl, you may tell us.

A. Well, specialty stores of the type you have referred to in the question, are for the most part those who deal in better merchandise—

Mr. Weisman: May it please your Honor-Examiner Averill: Now, wait.

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Mr. Weisman: No, no.

Examiner Averill: He has to do this in order to answer the question.

Mr. Weisman: No, he says that-

Examiner Averill: As to ability to obtain supplies.

Mr. Weisman: But, Judge-

Examiner Averill: He thust first state what kind of supplies they have to obtain.

Mr. Weisman: I submit that he does not. I want my objection to appear on the record.

Examiner Averill: All right.

Mr. Weisman: He is asked for his opinion.

Examiner Averill: Yes.

Mr. Weisman: He is not asked to argue his opinion; and I submit that a hypothetical question given to a witness, the courts have again and again said if after the witness is qualified, and based on something, he can then give his opinion. Now, this man has been asked his opinion, that in the ordinary and regular procedure requires an answer, in my opinion, thus and thus is the fact, not a long exhortation upon why he thinks it is, or argumentatively presenting his knowledge of it. He is asked for his opinion, and I submit we should have his opinion in answer to such a question.

Examiner Averill: The objection is overuled.

Mr. Weisman: Exception.

Examiner Averill: Yes.

Mr. Weisman: May I have an exception?

Examiner Averill: Surely.

The Witness: Now, may I have my answer read?

Q. (Answer read.) A. (Resumed) In my opinion, therefore, they do not have any trouble getting merchan-

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dise, because the whole market is open to them, not only the non-Guild market, but the Guild market as well. As far as selling merchandise is concerned, they are materially assisted by the F.O.G.A. program because of the fact that the program itself tends to eliminate competition; it will eliminate competition on copies, and mere copies of better merchandise made by Guild manufacturers which is handled by these specialty shops.

Q. Now, to that same question, I will ask you to confine

By Mr. Haycraft.

your answer to those speciality shops that are not cooperating with the Guild, and do not return garments to manufacturers that are alleged to be copies of garments sold by members of the Guild. A. All right. Such shops, in my opinion, or, as I understand them, are, for the most part, those shops who handled merchandise in the low-end brackets, primarily up to \$6.75 cost, but in rare cases possibly a little higher. These shops have had very little difficulty obtaining merchandise, because they were doing business in brackets where the Guild had very few members, and, furthermore, had very few members- Cross the last out. -as far as selling the merchandise is concerned, they were materially assisted by the Guild program since that program tended to eliminate some competition of these low-end specialty shops who are not co-operating with the Guild, those signatories to the Guild program, or, rather, those retailers signed up with the Guild program who previously had handled copies and near copies, and adaptations of merchandise manufactured by Guild members, and

Q. With this same question, this same foundation question, I will ask you for your opinion of the effect of the Guild program upon department stores handling both

there might materially assist these specialty shops in disposing of their merchandise with less competition.

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high- and low-priced garments— A. Is the question finished, sir?

Q.—first co-operating with the Guild program by returning to manufacturers garments that are alleged to be copies of garments manufactured by the Guild manufacturers.

Mr. Weisman: Just wait a minute. I assume that when we are speaking of the Guild program in this query, and in all these lines, this line of queries, my learned adversary is referring to the Guild program, as it was at some particular point. Unfortunately, that point has not been fixed in these questions. Obviously, the program has been a different one all along. I assume, therefore, if Mr. Hayeraft concurs therein, that the question projects itself to the Guild program as it was in February, 1936, and these answers shall be deemed as of that date.

Mr. Haycraft: Yes.

Mr. Weisman: I think that will aid the record materially.

Mr. Haycraft: Correct.

Examiner Averill: Is that correct?

Mr. Haycraft: That is my intention.

Examiner Averill: That is how you understood it, Mr. Bergdahl?

The Witness: Yes.

Examiner Averill: I just want to know if he understands that as to his answers—he said he did—so that will be all right. Read the last question—or do you know what it was?

The Witness: Yes.

Examiner Averill: You know what it was?

The Witness: I understood it; yes, sir. Examiner Averill: But now off the record. 10940

(There was a discussion off the record.)

Mr. Weisman: Would you like the question read again?

The Witness: No, I am just trying to think-

Mr. Weisman: Oh.

The Witness: —think about the answer. In my opinion, and according to my experience, most department stores handle a range of merchandise, generally, from the very lowest up to price lines that are controlled by the Guild. Many department stores also have budget shops and basements where they specialize in low end merchandise. Such department stores co-operating with the Guild could only do so from the beginning with a leniency consideration, as has been described here, and those stores, even with the leniency consideration, which got more stringent as time went along, up to February 1, 1926, when—

Examiner Averill: 1926?

The Witness: 1936.

Examiner Averill: Surely.

A. (Resumed) —when it was withdrawn entirely, I mean, the leniency consideration. And those stores would, when that leniency consideration is withdrawn entirely, find it very difficult to maintain a competitive position in their respective localities. If they chose to co-operate with the Guild on the complete program, without leniency consideration, they would bave to return merchandise in the low end that the specialty shops, who were not co-operating with the Guild, could keep and sell. If they chose not to go along with the Guild, they are then faced with the situation of trying to be competitive with the better specialty stores who handle Guild merchandise and have a free and open market on all price lines, without

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having the benefit of buying and handling merchandise that is manufactured by Guild resources—by F.O.G.A. resources.

This would prove, in my opinion, very difficult for most department stores, since most department stores in the United States to day have been in business for a number of years, and in accordance with the laws of the land have been permitted to grow, invest money, put capital into the business, on handling merchandise whether they were copies or not, without infringing on laws of the land——

The Witness: Whether they were copies or not without infringing the laws of the land. Now, as I understand it, these department stores have (have been) permitted in accordance with the directors of the industry to handle copies—

Examiner Averill: You mean "have been permitted"?

The Witness: —have been permitted in past business practices, and without infringing on any laws, as I understand it, have been permitted to handle these copies as were made by the industry, and , after they have built up a big business, or a considerable business, according to their ability, to ask them not to continue handling such merchandise—

Examiner Averill: When you say "such merchandise," you mean copies?

The Witness: I mean copies. —affects their whole tempo and their investment and everything that has been built up by them in their respective communities, so that to some it would be very difficult—to sum it up, it would be very difficult for a department store to sign up with the Guild program, and honestly live up to it.

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10948 Herbert L. Bergdahl-For Commission-Direct-Cross.

By Mr. Haycraft.

- Q. Now— A. Particularly if they handle low-end mer chandise.
- Q. Have you completed your answer? A. I think I have, sir.

Cross-examination by Mr. Weisman.

Q. Mr. Bergdahl, as executive director of the A.M.C. who is your immediate superior?

Mr. Haycraft: I object to the question because the witness has not said that he was executive director.

Mr. Weisman: Very well. I will withdraw the question.

By Mr. Weisman.

- Q. What is your position with the A.M.C.? What are you? A. At the present time, I am general merchandis manager.
 - Q. Thank you. The mistake was mine. A. O.K.
- Q. As such general merchandise manager, who is your immediate superior? A. Col. Reilly.
- Q. What is Col. Reilly's full name? A. Phillip J. Reilly.
- Q. From Col. Phillip J. Reilly you take your orders!

 A. He is my superior.
 - Q. Well, what does that mean when you say he is your superior? Do you not take orders from him if he sees fit to give you them? A. That is right. I do.
 - Q. Now, who is, in turn, the person or persons to whom Mr. Reilly reports to? A. I am sorry, I did not get the question.
- Q. Who is, in turn, those to whom Col. Reilly reports?

 A. Store principals.

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- Q. You mean, the executive committee of the A.M.C.? A. Yes, if you wish.
- Q. No, I do not wish it as I wish; I want it as the facts are. A. Well, it is the same thing, but if you want to call it the executive committee, all right.
- Q. It is not what I want to call it. You might be surprised what I really would like to call it. Do you people call it the executive committee? A. Yes.
- Q. I just want to get a sketchy picture of the organization for which you work. In other words, does this organization which is composed of, in the main, these eighteen stores, and the executives of these eighteen stores, do they composed the executive committee of the A.M.C.? A. That is right.

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- Q. I said eighteen, but I meant to say twenty. There are twenty of these stores? A. Yes.
- Q. Does the executive committee function as the board of directors, you might say, of a corporation, in that it directs the policies and affairs, generally, of the A.M.C.? A. That is right.
- Q. The direct executive officer to carry out the directions and policies and flats of the executive committee is Col. Reilly, Col. Phillip J. Reilly? A. He is.
 - Q. And you are under him? A. Yes.
- Q. As such merchandise manager, have you made any study of the markets, the retail market, and the problems thereto, aside from your direct experience? A. How do you mean?

Q. Well, I mean, sometimes executives are known to read brochures on the subject which they are concerned with. There are economic professors of various colleges and universities who write on these things, and who conduct researches. Have you made it your business to keep yourself well informed as to who are recognized in the industry, and in the merchandising field, as authorities in this business in which you are engaged?

Examiner Averill: Are there any such?

Mr. Weisman: Yes, your Honor.

Examiner Averill: You mean theorists?

Mr. Weisman: Well, they are not alone the orists, but there are a number of well-known economic advisers who have made great research into these problems, collated the evidence and facts, and presented them to the public. As a matter of fact, I believe it is not secret that the A.M.C. employed one of those, to wit, Prof. Paul H. Nystrom.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: The question may be answered.

The Witness: What was the question before that?

(The prior question was read.)

The Witness: I do not understand.

Examiner Averill: He means, have you conducted any investigations or read into the literature of the so-called experts or theorists and college professors. A. As I understand the question, I cannot say that I have.

By Mr. Weisman.

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Q. In the exercise of your duties, did you ever hear that there were pamphlets or books put out by the Department of Commerce of the United States, let us say, upon these problems of style piracy? A. No. I cannot say that I have.

Q. Did you ever hear that the advisory council of the N.R.A., after the N.R.A. had been declared unconstitutional, had made a collation of all the facts which had been made available to it, and had written on this subject of style piracy as applied to the general merchandising of

ladies' ready-to-wear? A. I did not know that they had made such a thesis on style piracy.

- Q. Did you ever hear of Professor Nystrom? A. Yes, sir.
- Q. Professor Paul H. Nystrom, PhD., Professor of Marketing, School of Business, Columbia University, formerly director of the Retail Research Association, and the Associated Merchandising Corporation. That is the A.M.C., the last one, is it? A. Yes.
- Q. When Professor Nystrom was with the A.M.C., was he the head of the A.M.C. at that time? A. He was the director.
- Q. Yes. He was in the place that your superior, Mr. Reilly, now is? A. Yes, sir.
- Q. Did you, in the exercise of your duties, ever learn that Professor Nystrom had written books wherein—a book known as "Fashion Merchandising," based upon his experience as head of the A.M.C., and based upon independent investigations and researches that he had made? A. Well, I knew that he had written books.
- Q. Did you know that he had written the book that I have just referred to, "Fashion Merchandising"? A. I have heard of it, but I have never read it.
- Q. Did you ever feel that, as an expert in this line or engaged in this business, as you have testified—because we will see what sort of an expert you are as we go along—you should, or that part of your duties would be, to inform yourself with what other seemingly well-informed people had to say and think about these problems?

• Mr. Haycraft: I object. Examiner Averill: Overruled.

Mr. Martin: Exception.

By Mr. Weisman.

Q. Answer the question. A. Why, I think I know what Dr. Nystrom thinks pretty vell without reading his books.

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- Q. You mean you know what he thinks because you have met him? A. Met him and talked to him.
 - Q. And talked with him about these things? A. Yes.
 - Q. At great length? A. Yes.
- Q. Do you agree generally with Dr. Nystrom's conclusions, or do you differ from them?

Mr. Haycraft: With respect to what? I object to the question in the present form as too broad.

By Mr. Weisman.

Q. With respect to the problems incident to fashion merchandising in ladies' ready-to-wear.

Mr. Haycraft: I object to that unless it is restricted to the subject matter of this case.

Examiner Averill: I think it is too broad.

By Mr. Weisman.

Q. With regard to style piracy. A. Why, if you will tell me what he wrote at one time or another I will try to answer you.

Q. All right.

Mr. Haycraft: I want to make this plain, that I shall object to any question that will refer to whether or not style piracy is good or is not good as a thing that should be done. That is not an issue in this case. It has not been made an issue in this case. The witness has not testified to that. The witness has testified to the effect that he felt so and so about the activities of this particular guild. I wish to object to any generalizations.

Examiner Averill: I would like to ask if any question has been directly raised as to style piracy per se, and when I say "style piracy" I mean the

copying of designs put out first by certain people and then other people copying them?

. Mr. Haycraft: That is not an issue in this case.

Mr. Weisman: As I understand it, there is no allegation that that per se is an unfair thing or that the efforts to curb it per se is unfair.

Mr. Haycraft: No. That is not an issue in this case.

Examiner Averill: It is the methods used in an attempt to curb it that is the issue?

Mr. Haycraft: This effort made by this Guild. Examiner Averill: Therefore, unless Mr. Weisman sees some good reason, I do not know that it is essential to go into the question as to the wisdom of the economic set-up or the economic reasons for endeavoring to protect your own designs. It seems to me there is no allegation that that per se is unfair.

Mr. Weisman: May it please your Honor, do I understand that counsel for the Commission will at this time be willing to and will stipulate that there is a right in a manufacturer of an original design to attempt to protect that original design from copying?

Mr. Haycraft: No, I make no stipulation with respect to that question whatever. It is not an issue in this case.

Examiner Averill: He will stipulate that there is no issue in this case, I imagine, as to that.

Mr. Haycraft. That question has never arisen in this case.

Examiner Averill: As to the individual right to attempt, by any fair means, to protect your own designs. That is not an issue in this case?

Mr. Haycraft: That is not an issue in this case.

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By Mr. Weisman.

Q. On page 218 of Dr. Nystrom's book "Fashion Merchandising," he says: "No sooner does a new design of any excellence appear upon the market than goods also appear, usually in poorer materials and workmanship, and almost invariably at lower prices." Do you agree with that?

Mr. Hayeraft: That is objected to.

Examiner Averill: Overruled.

Mr. Weisman: If your Honor please, that is a foundation question. I cannot ask all of my questions at once.

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By Mr. Weisman.

Q. Do you agree with that, from your experience? A I would say so.

Q. Dr. Nystrom then goes on and says: "Consumers are confused, and are naturally unwilling to pay higher prices when apparently the same goods are available at lower prices." Do you agree with that?

Mr. Haycraft: Same objection.
Examiner Averill: Overruled.
Mr. Haycraft: Exception.
Examiner Averill: Noted.

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A. Not entirely.

By Mr. Weisman.

Q. Tell me wherein you differ. A. Well, in my experience, we have had a number of instances where merchandise is sold in the better priced lines long after it was copied.

Q. Dr. Nystrom-

Examiner Averill: He did not say that that was not so. I do not think the witness has fairly answered the question.

Mr. Weisman: I do not think so, either. I ask the question be read to the witness.

(Question .read.)

By Mr. Weisman.

Q. May I also say, when I ask you "Do you agree with that?" that I do not mean do you know of any specific instances where the situation has been different, but I mean: Is that a fair general statement?

Mr. Haycraft: Of course, I am objecting to all of this as not proper.

Examiner Averill: Oh, this is proper cross-examination; he has a right, when you offer this man as an expert, he has a right to ask him what other men have thought about the matter who have written on the subject. My only idea is—and there seems to be such a confusion among counsel that I do not desire at the present moment to express a definite view upon it—I do not think, from my reading of the complaint, I do not think there is any issue in this case in connection with the efforts to check style piracy, so-called, but that the case is centered upon the methods used in the attempt to—

Mr. Weisman: Exactly.

Examiner Averill: —check style piracy, resulting with or dealing with, rather, the things that may have been done by this Guild in its efforts to check style piracy, as the copying of the original designs of others is referred to in this case.

Mr. Haycraft: Yes, sir; and also as to whether or not style piracy may or may not be to an ex10970

tent, and, also, as to what extent an evil in the industry, and that is the reason I am declining to stipulate with Mr. Weisman on that; and, further more, I am making these objections to these questions.

Examiner Averill: That is not a direct issue, as I see it, but I can see that collaterally it would have some effect because of the fact that you are asked to stop something which may be, per se, a beneficial thing; obviously, it would be entirely different from the situation if the thing which you might be attempting to stop was an evil. Obviously, if two automobiles are rushing down the street at great speed, and in excess of that speed usually adopted by vehicles moving down the street, and one of them is an ambulance upon a message of mercy, and the other is loaded with racketeers or bandits fleeing from the scene of a villainous crime, the actions of officers in stopping the two cars would be considered in a different light.

Mr. Haycraft: Well, then, of course I disagree with the Examiner in the light of the recent decision of the Supreme Court—

Examiner Averill: I do not happen to see it.

Mr. Haycraft: I do not think it makes a bit of difference as to whether the subject-matter of the thing to be stopped is an evil, or not an evil.

Mr. Weisman: That is a wrong interpretation of the-

Examiner Averill: One moment, one moment, gentlemen.

Mr. Haycraft: The contention of the Commission is that regardless of whether it is an evil or a benefit, that you cannot use a boycottt to stop it, and that is the issue in this case.

Mr. Weisman: Well, this-

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Examiner Averill: One moment-

Mr. Haycraft: In numerous cases where boycotts have been used to protect a beneficial thing, the courts say you cannot do it.

Mr. Weisman: That is not so.

Mr. Haycraft: And that is where the issue is in this case.

Mr. Weisman: Justices Brandeis, Roberts and Stone, those are the respective people who disagree with my friend's statements, and I do not want to add myself to those august presences, it would be presumptuous.

Examiner Averill: Go ahead, and I am going to let you go into it a little.

Mr. Weisman: Thank you:

Examiner Averill: Not too much, though.

Mr. Weisman: Well, just off the record, please. (Prolonged discussion off the record.)

Examiner Averill: Now, back on the record. Read the last question.

(Last question read.)

Examiner Averill: I am going to overrule the objection, gentlemen, and let it go on, although I do not think that at this stage, as I have stated off the record, that at this stage the question as to whether the style piracy is an evil or a good is an issue in this case, but I can see where it might be an issue, or for the affirmative defense, but I am going to let you proceed for a little while on that, and then possibly you—

Mr. Haycraft: I wish to have an exception, Mr Examiner, to that ruling.

Examiner Averill: Yes.

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By Mr. Weisman.

Q. Will you please answer, Mr. Bergdahl? A. Well, it would be pretty hard for me to testify as to whether or not customers were confused; I have not heard of any confusion among customers on this plan, on this copying business. I think customers are aware that there is copying.

Q. Well, let me ask you this: Is it your statement that these—that when you find a copy—is it not generally a fact that the copy sells at lower price than the original?

A. A copy generally sells at a lower price than the original.

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And is it not one of the great contributing factors to that lower price that the manufacturer of the copy takes the benefit of the experimentation, designing, and so forth, of the manufacturer, or the originator, and just takes it over, without the expense of the original manufacturer—the manufacturer of the original had, with regard there to? A. In the first place, I cannot quite acree that there are originals. I used the word "original" to ause I think I know what you mean, original with the so-called Guild manufacturers, but that does not mean that it is entirely original, you understand.

Q. We understand what we mean. We mean origination of design, and not of style. A. Now, will you—after I made that statement—what was the question?

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(Last question read.)

A. Well, if he takes—if he copies another man's dress, he takes it over, at whatever it costs him, to do that a Now—

Q. Well, is that the best answer you can make, Mr. Expert? A. Why, if a man copies another man's dress, I will—

Examiner Averill: His point is this-

The Witness: —I will agree that he does not share that other man's expense, if that is what he wants me to say.

Examiner Averill: That is what he meant.

The Witness: He does not go over to the man and say, "Here, I will contribute to your expense of doing business"—

Examiner Averill: Oh, no, no.

The Witness: I will agree—

Examiner Averill: Not the expense of doing business, that is not the point. Here is the point: Is there not some expense formed by the man who puts out what is termed to be an original design, in designing, in having it designed? Is there not some expense in that connection, which expense would not be attached to it who, seeing that design, used it and made a copy of it?

The Witness: That is right.

Examiner Averill: Do you see what I mean?

The Witness: Yes.

Examiner Averill: Is there not something of that sort?

The Witness: Yes.

Examiner Averill: That is what he meant.

The Witness: That is right.

By Mr. Weisman.

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Q. Professor Nystrom further says: "No sooner than a new design of any excellence appears on the market, that copies also appear usually in poorer materials and work-manhip." Is that not true? A. Well, new ideas are copies, and they are usually copied into lower-price lines.

Q. Well, no, and is it not usually in poorer materials?

. .

- Q. And with poorer workmanship? A. Not always.
- Q. No, I did not say "always." It is usually, we know that— A. Well, I beg your pardon, I wish it were usually.
- Q. That is different. Do you differ— A. —generally, and many times, the low-end merchandise is better than the better merchandise—
 - Q. Wait a moment— A. —so let us get it very clear.
- Q. Then you differ from Professor Nystrom's statement? A. Undoubtedly; many times I would differ with what he would say, and I think he would agree with me if I would talk to him on the subject, too, because we have had many chats on the subject, and he has admitted many times that I have new slants on things that he did not have.

10985

- Q. I see. A. I am not criticizing him any, see; he has the right to his opinion; but I have a line of work that he never has, and maybe I have a different—
- Q. So, let us see. So, then, it is your statement, is it that usually these copies at lesser prices are in merchandise, that is, in goods, that are equally as good, with equally good workmanship— A. It depends.
- Q. —is that your statement? A. It depends on two many things.
- Q. Would you then say— A. I will answer it: There are copies—there are copies which are as good, if not better, than the so-called "original"; at lower prices; and there are copies that are inferior, have inferior material and workmanship, at lower prices. There are both.

- Q: Well, now, since this is so, would you not say, then, that by your very answer you have demonstrated that Professor Nystrom's statement, which I read to you before to the effect that consumer influence arises from this, is correct? A. No.
- Q. No. All light. Now— A. I think the public knows what is going on. I think I know they are copies, and I think they can tell what they are. I do not think there is any confusion about it whatsoever.

- Q. All right. Professor Nystrom further goes on to say: "As a consequence"—referring to the copying—"it is voluntarily impossible for any creator or originator to recover even the cost of his efforts to prepare new designs, to say nothing of making a net profit from any new designs." You differ with that, too, I take it? A. Is that the whole statement?
- Q. That is, that ends the paragraph. A. That ends the paragraph, eh? What does that say again? You mean you have read the first two sentences of the paragraph previously?
- Q. Yes. A. And now you are reading the entire other subject-matter of that paragraph; is that right?

Mr. Haycraft: I suggest that the witness be allowed to read the sentence, and that portion of it.

Examiner Averill: You might let him see it.

Mr. Weisman: I have no objection.

By Mr. Weisman.

Q. Would you like to see it? A. Yes.

(Counsel indicates in book to witness.)

Q. I just read you the last sentence of the paragraph starting here—I want you to read it—"As a consequence, it is voluntarily impossible for any creator or originator"—I ask you now, do you differ with that statement? As Just a moment.

Q. All right.

Mr. Haycraft: Of course, Mr. Examiner, I wish to make this observation, as part of my general objection to this question—this witness is not, in my opinion, prepared to testify, or an expert, as to the problems of manufacturers.

Mr. Weisman: Will you so stipulate? Did you not offer him?

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Herbert L. Bergdahl-For Commission-Cross.

Mr. Haycraft: Weit a moment until I get finished. I attempted to qualify him, and, in my humble opinion, I did not do so.

Mr. Weisman: Oh, well, all right, maybe I do not want to ask that question.

The Witness: Wait a moment.

Examiner Averill: Well, now, there is a question pending—if you want to withdraw it, all right.

Mr. Weisman: I withdraw that question in view of the statement made by Mr. Haycraft.

The Witness: What was the statement; may I hear it?

Mr. Weisman: That you were not any expertas to manufacturers' problems.

Mr. Haycraft: I recall my hypothetical question that I placed with him was as to the retail problems, and I object to go into the manufacturers' problems.

By Mr. Weisman.

Q. Professor Nystrom says, referring to concerns which originate their designs: "Such concerns find their designs promptly imitated in a wholesale way as soon as placed upon the market." Now, do you agree or differ with that statement? A. Well, there are certainly exceptions to his statement.

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Q. No, I am asking you as a general proposition—do you agree with or differ from that statement? A. Well, I—I will agree with that, with the exceptions I noted.

Q. Now, Dr. Nystrom also says, referring to the industry as a whole: "Almost everyone deplores design copying in principle, but lacking any effective legal check copying continues openly and brazenly." Do you agree with that statement, or do you differ from it?

· Mr. Haycraft: Objected to unless the time is indicated there, Mr. Examiner.

Examiner Averill: Gentlemen, I do not think— I think you have gone far enough.

Mr. Weisman: Your Honor-

Examiner Averill: "Openly and brazenly" are two words—if you want to make it whether copying are assuming larger and larger proportions, all right, ask him that.

Mr. Weisman: Yes.

Examiner Averill: But when you talk about openly and brazenty, we do not know what the witness means by that, or what the learned author meant.

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Mr. Weisman: Well, I withdraw that and say:

By Mr. Weisman.

Q. Professor Nystrom tells us that almost everyone deplores design copying in principle, but lacking any legal check copying continues—

Mr. Haycraft: Your Honor understands, of course, I have an objection to all of this line of examination.

Examiner Averill: All this line, yes.

By Mr. Weisman.

Q. Do you agree with that? A. May I read it? May I fook at it myself? You said you had no objections. I welld just as soon look at it.

Q. Well, here I have no—it is a very simple question; there it is (handing book to witness). I do not want to hide anything from you, Bergdahl. A. Well, I would agree with Dr. Nystrom that copying is a very difficult problem to solve, and it does continue, but I do not want to use the same adjectives.

Q. No. A. I do not know what he meant by that Q. That is all right; I am trying—Now, he also says as follows: "Indeed, there seems to be scarcely any industry in the fashion field in which one may not now find producers who not only copy, but who systematically make up their lines by imitation of the best selling numbers of the leading creators in their respective industries." In your opinion, is that true, with regard to the dress

Q. Before the Fashion Originators Guild started its program? A. Well, I think there were many manufacturers—are many manufacturers who do that at the present time.

Q. In other words, then, I understand you would say that from your experience, that at the time that the Fashion Originators Guild was organized, there were a number of people engaged in this business who did no origination but merely copied the best selling numbers of the leading creators in the ready-to-wear business; is that not so? A. There were, including members of the F.O.G.A.

Q. Now, will you-

market? A. When?

Mr. Weisman: I move that the latter part of the answer be stricken out.

Examiner Averill: Why?

Mr. Weisman: Well, because I think it is not responsive, and I will come to the question—I will give him the opportunity to say that immediately after, but I want it to appear very plain; I do not want to cover anything up.

Examiner Averill: I know.

Mr. Weisman: See?

Examiner Averill: But I do not see why coun-

Mr. Weisman: All right, I will let it stand, if your Honor thinks it should.

Examiner Averill: Yes.

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By Mr. Weisman!

Q. You said in answer to my question, "Yes, and that is true as to some of the people who are now members of the F.O.G.A." Is that correct? A Yes, "including."

Q. —"some of the members of the F.O.G.A."? A. That

is right.

Q. In other words, some of the members of the F.O.G.A., before the formation of the F.O.G.A., made their living by imitating the best selling numbers created by others?

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. Is that not so? A. I am not sure whether they did

make their living that way or not.

Q. Do you remember at the time that the Guild was formed that copying or pirating of original designs had become very rampant—was on the increase?

Mr. Haycraft: 1 object to the use of the word "pirating."

Mr. Weisman: Well, I. will withdraw the question.

By Mr. Weisman.

Q. You understand that the copying of designs, original designs, by these copyists, is generally referred to in the industry as pirating of designs—or is that something new to you? A. Well, I do not know that it is used any more than copying is, it—

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Q. Well, do you know whether or not— A. Since the Guild have come into existence they have used that word more than it was used before, ' Before that it was copying, as I recall it, copying.

Herbert L. Bergdahl-For Commission-Cross.

- Q. You think that the Guild influenced Professor Nystrom to use the word "pirating"? A. I did not—
 - Q. Is that it? A. I did not say that.
 - Q. How do you explain- A. I said that-
- Q. How do you explain that Professor Nystrom in his book, which was published before the formation of the Guild, refers to this practice as pirating? A. I could not explain it.
- Q. You think it is a mere coincidence? A. I could not explain it, how he came to use certain words.
- Q. But you understand that to-day in the dress industry there is a well-defined and customary term known as pirating designs, do you not know that? A. I know that.
 - Q. Do you or do you not?

Examiner Averill: Let the man answer the question,

By Mr. Weisman.

Q. "Yes" or "no," Mr. Bergdahl?

Examiner Averill: No, it is not a "yes" or "no" question; go ahead.

Mr. Weisman: Excuse me.

A. I know that that term has come to mean something in the industry since the F.O.G.A.—I mean, commonly among the people in the industry—retailers like myself, and buyers, and so forth, since the F.O.G.A. has become active, primarily with their piracy committees, that word "piracy" has been used more than before,

Examiner Averill: And has it not come to be in the industry synonymous with copying, the term "piracy," "pirating"?

The Witness: Yes.

Examiner Averill: Synonymous with copying? The Witness: Now it has.

Examiner Averill: Yes. The Witness: Yes.

By Mr. Weisman.

Q. Would you say that at or about the time that the Guild was formed there was a great deal of piracy in the ladies' ready-to-wear field?

Mr. Haycraft: Same objection.

Examiner Averill: The objection is overruled.

A. Well, not affy more than in the years preceding that. I have been in the business now for—what is it—fifteen years, or thereabouts, and, as I recall it, it was no different in 1932 than it was in the ten years preceding it.

11006

- Q. Well, do you not— A. Mr. Weisman got through saying that he has been in it seventeen years, and he has known it for seventeen years, that it has been business that this has gone on.
- Q. No, I did not say anything of the kind. I said I knew the business for seventeen years. Do you not know about when style piracy, as such, commenced? A. Yes, when the ready-to-wear industry began in this country.

Q. When, in your opinion, as an expert, did the ready-to-wear industry begin in this country? A. Oh, I suppose—I should say about seventy-five years ago, as an industry.

Q. That is your opinion? A. Well, it became a sizable business; it began to be around that time, maybe a few years before that. I think prior to that time it was mostly a private tailoring business.

Q. Do you not know that the ready-to-wear industry in America has only an age as such, in the ladies' field, of about twenty-two years, do you not know that? A. No, I don't.

Q. Do you not know that before that-

Mr. Weisman: We will prove it, Judge; that may sound strange to you—here is an expert that ought. to know it, but your Honor does not know it.

The Witness: I---

My Mr. Weisman.

Q. Do you not know that before then the ladies' ready to-wear industry was carried on by the dressmakers, and there was not really a ladies' ready-to-wear industry? A. Prior to twenty-two years ago?

Q. Yes. A. That is not so.

Q. Let me ask you who, in your opinion, was the first manufacturer of ladies' ready-to-wear in the City of New York—do you know? A. No, I could not tell you.

Q. Did you ever hear of the firm of Jesse Wolf & Company? A. Yes, sir.

Q. Would it surprise you to learn that it was Jesse Wolf who formed the ladies' ready-to—laid the foundation of the ladies' ready-to-wear industry in the City of New York, and that before the formation of his company we had no ladies' ready-to-wear industry? A. No, it would not surprise me.

Q. Well, then you think that may be a fact? As Is that twenty-two years ago?

· Q. What do you think? You are the expert. A. You are, for that information.

Q. Well, do you not know, as a matter of fact, is it not common knowledge— A. The thing—I will say his—I do not know exactly when it began, but I know that the industry was in existence prior to 1900, that it was an industry, and it has been an industry for some time.

Q. How do you know that? A. Well, I have talked to a good many people who were active in it before I was.

Q. And they told you? A. Yes.

11009

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Q. That it was an industry? A. They have been in the business since they were children, and so forth, and it must be an industry that has been going on here for some years.

Q. Do you now say that when the ladies' ready-to-wear industry was formed there was immediately copying, or do you not know, as an expert, that copying first became noticeable in this industry in or about the year 1924? A. Well, now, I have been active in this industry since 1922, and it was very—it was thriving then.

Q. Well, would you say it was thriving to the same degree that you found it thriving in 1929? A. Yes.

Q. In your opinion, this copying, in the dress industry, then, was not a progressive evil that was growing each year by leaps and bounds—

Mr. Haycraft: I object to the use of the word

Mr. Weisman: Well, I will withdraw it. I want to make it very plain. I do not want to argue.

By Mr. Weisman.

Q. In your opinion as an expert, would you say that copying, as such, in and by itself, is an evil in the industry, or is generally regarded as an evil in the industry?

Mr. Haycraft: Objected to unless the question carries with it what is meant by copying, whether he means exact copying, adapting, or coming as near to it as possible.

Mr. Weisman: Pirating, pirating.

Mr. Haycraft: No one knows what copying is exactly. Mr. Examings.

Mr. Weisman: Nobody but you.

Mr. Haycraft: We have not had a definition yet.

I do not think anybody knows what copying is, and
I object to the form of the question.

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The Witness: I will tell you, your Honor.

Mr. Haycraft: Wait until I get a ruling.

Examiner Averill: Have you not already gone into that with the same witness, this same question asked?

Mr. Weisman: I assumed that that was the basis of the objection, and I did not want to press it your Honor. I thought to make it plain. Of course, he said it was an evil.

Mr. Haycraft: No, he has not.

Examiner Averile: No, I did not say he testified it was an evil; I said he testified as to it in the early part of his examination.

The Witness: Will you read the last question to me again?

Mr. Weisman: What?

The Witness: May I have the last question read to me again?

Mr. Weisman: Surely.

Examiner Averill: Let us not go into that again

Mr. Weisman: All right.

By Mr. Weisman.

Q. This matter of copying, or pirating, would you deny that from the year 1922, and thereon upwards, that it was getting progressively greater, and worse? A. I will answer that for you.

Q. Well, I want you to, I want your answer. A. But I cannot answer "yes" or "no"; if you want it that way I will decline from answering, but I will try to explain it, and I won't hide anything.

Q. I do not think you would. I think you want to be fair. A. I do not think copying changed any, or the practice of copying, as long as I have been in the business, but all production facilities may have increased, or made copy

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ing a little different than it was before, but the practice itself of copying merchandise has been going on just as aggressively all the time that I have been in business. I mean—since the first day I put my foot into this, I knew that that was the way that the mass of the industry made its living, by copying, by doing something else that the other fellow was doing, whether it was from Paris, or New York, here, or some place else. That is the way they did their business. That is the way the industry grew to be the biggest industry—

Examiner Averill: He also means, I understand, of course, that by reason of the large increase in population—

The Witness: Yes.

Examiner Averill: —the increase in the number of manufacturers, and the increase in retail stores—The Witness: And production.

Examiner Averill: —that necessarily there was more copying or more occasion—

The Witness: There was more production.

Examiner Averill: —or more opportunity —

The Witness: There was more production, you see.

Examiner Averill: That is right.

The Witness: I used the words "there was production and copying" but not more copying, because I think that was just the same as it was before. In fact, when the industry was young, I think they knew so little that all they did was copying, see? I mean, they got all their ideas from Paris, or somewhere else, when it was a young industry—all they did was copying, they knew so little, and, if anything, since, the industry has been going the other way, and, without our so-called good intentions—what we try to tell them to put over—because I think I helped that little matter—

11018

By Mr. Weisman.

- Q. You mean you helped the Guild in this program? A I surely tried to.
- Q. And you did that because you thought that the program, when you were helping it, was a good program? A At the time.
 - Q. Let me finish? A. At the time I did.
- Q. Yes. A. At the time I did; at that time, though, I want to qualify it—
- Q. My question qualified it, Mr. Bergdahl. A. Thank you.
- Q. You say when you helped you thought that the pre-11021 gram— A. I was sincere about it at that time.
 - Q. And you are not most sincere now? A. Well, I have learned a little about it in the meantime.
 - Q. No, answer it "yes" or "no."

Examiner Averill: He cannot answer "most sincere" now. That is not a question of sincerity. As I understand it, his views have changed.

Mr. Weisman: I want to find out what he said Examiner Averill: He might still be just as sincere.

By Mr. Weisman.

Q. Let me ask you this: As an expert, and with the knowledge that you have testified to here, can you tell us generally whether or not in your opinion in a large number of instances the methods resorted to by the pirate, of the copyist, whichever you prefer, to obtain copies are ethical means or unethical means?

Mr. Haycraft: Objected to.

Mr. Weisman: I want his opinion.

Mr. Haycraft: I object to it. . .

Mr. Weisman: In his opinion as an expert.

Mr. Haycraft: No place in this. Examiner Averill: Sustained. Mr. Weisman: An exception.

By Mr. Weisman.

Q. As an expert, has it ever come to your attention that a great deal of this copying is done by obtaining the original through unethical means?

Mr. Haycraft: I object to the use of the word "ethical."

Examiner Averill: Let him finish his question.

Mr. Weisman: I have finished.

Examiner Averill: You have finished?

Mr. Weisman: Yes.

Examiner Averill: The objection is sustained.

11024

By Mr. Weisman.

Q. Has it ever come to your attention that the copyist, or the pirate, in an effort to obtain the original would cause the original to be purchased by false representations that it was for resale?

Mr. Haycraft: Objected to.

Examiner Averill: Same ruling. Mr. Weisman: May I understand?

Examiner Averill: The same line of questions; it is the same line, and the objection is sustained.

Mr. Weisman: May I show what these copyists did? A. I mean, that he knows as an expert that these copies were obtained frequently through theft, through misrepresentation, through fraud.

Examiner Averill: I know, but that does not add anything to it.

Mr. Weisman: How?

Examiner Averill: I do not think that adds anything to the issues in this case, as I see them.

AFTERNOON SESSION.

Examiner Averill: Proceed:

H. O. Bergdahl resumed the stand and testified fur as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Beggdahl, is it your opinion that if retailers were to agree to refuse to handle copies the control and protection of design might be complete and effective?

> Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant.

> Examiner Averill: That is proper cross-examina tion. Objection overruled.

A. If the retailers—what is that?

Q. If retailers would agree to refuse to handle copies, do you then believe the control and protection of design would be complete and effective? A. Do you mean all retailers?

Q. Yes. A. Every retailer in the United States?

Q. Yes. Well, I mean if we had 5,000 or 10,000 retailers, I mean that I do not mean that you have to get 10,000, I mean as we understand, substantially all. A. I would definitely disagree with you.

Q. No, no, not with me. I have not expressed any opinion. A. I understand.

> Examiner Averill: He has not expressed any opinion. He desires an opinion from you.

A. I could not, if that question means that-if you will ask me, or if you are asking me that if a substantial num

ber of retailers would agree to refuse to handle copies, then my answer would be no, that that would not solve the problem.

By Mr. Weisman.

- Q. I did not ask you that, did I? . You knew I did not ask you that, did you not? A. No. I am trying to answer you.
 - Q. Suppose we read the question. A. Yes.
 - Q. And you and I want to get along here. A. Yes.
- Q. So, if you cannot answer my question, please, just say so, but if you can, please do so. A. I am trying.

Mr. Weisman: Will you read the question again, please?

(The question was read.)

By Mr. Weisman.

Q. Do you understand that question? A. If you will qualify that as to how many retailers. 3

Q. I mean substantially all or those substantially who constitute all, we all know that you cannot reach or approach perfection in this life, but if substantially all of the retailers would agree to refuse to handle goods, do you or do you not believe that that would solve this problem? A. No, I honestly do not. .

Q. In other words, you differ with Professor Nystrom where he says as follows-reading from page 233 of his 11031 book "Fashion Merchandising"-if retailers were to agree to refuse to handle goods-"if retailers were to agree to refuse to handle copies the control and protection of design might be complete and effective," do you disagree with that, or do you not? A. I disagree with that.

Q. Is that not exactly what I asked you a moment ago? A Well-

Q. Wherein do you find any difference between my previous question and this answer that you have just given when you say "no"? A. Because Dr. Nystrom says if retailers—and he does not clarify that and therefore I am assuming—I would like to ask him about that, but I am assuming that the sentence means all retailers.

- Q. You mean 100 per cent? A. No.
- Q. In other words- A. No.
- Q. In other words, when you read a statement like that appearing in Dr. Nystrom's book from which I have read it, with your experience and knowledge of this industry, and your expert and intellectual approach to it that means to your mind that not a single one would not agree; is that so? A. I am giving you my interpretation of the question that, I, I—of my interpretation of that statement that you read there.

Q. I think we have enough on that, and I thank you for what you have given us and I will stand and not spend any more time on that, I will stand on that as it is. A. It is on the record that I do agree with Dr. Nystrom in that particular sentence, but I disagreed on the first.

Q. Oh, now, you want to answer that second one "yes"!

A. I thought I did answer it "yes."

Q. I understood you answered it "no." Do you mean your answer to that second question to be "yes"? A. I do

Q. Oh, then I am glad you said so, because I understood you said "no" to it.

11034

Examiner Averill: Yes, I think you did say. "no." Did you mean to say "yes"?

The Witness: Yes, your Honor, I meant to say "yes."

Mr. Weisman: At least, we have it straight, now, your Honor.

Examiner Averill: I think so.

The Witness: I want to be sure; it is on the record that I do agree with Dr. Nystrom in that particular sentence, but I disagree to the first.

Mr. Weisman: I think that is clear, your Honor.

By Examiner Averill.

Q. Is it? A. Yes, str.

By Mr. Weisman.

Q. If however, a degree of trade co-operation, such as was theretofore unknown in the fashion industry, would be brought about between retailers and manufacturers, such co-operation would be effective in controlling this design piracy; is that so?

11036

• Mr. Haycraft: I object.

Examiner Averill: That is so obvious. Let the witness answer that. Objection overruled.

A. If all retail distributors?

By Mr. Weisman.

Q. That is not what I asked you. A. I mean-I will-

Q. If you cannot answer, Mr. Bergdahl, you just say so to me and I think that will answer the question. A. I cannot answer it yes or no.

Q. All right. Well, we will not press you. A. Thank

Q. Because I would just as soon find out from you that you cannot answer it yes or no, as otherwise. A. O.K.

Q. In your opinion is design protection, properly planned and executed, a necessity to the sound establishment of industries in the fashion field?

Mr. Hayeraft: I object.

Examiner Averill: Sustained.

By Mr. Weisman.

Q. Let me ask you whether or not you are of this opinion, first: "Design protection is as necessary to the designer and the manufacturer of new designs as it is to the inventor of new machines or to the writer of books or music"? Would you agree with that, in your opinion, as an expert, or would you not say that?

Mr. Haycraft: I object. What possible relevancy can this have to it?

The Witness: Are you reading Dr. Nystrom's book?

11030 By Mr. Weisman.

Q. Aside from whether I am reading from his book or not, what is your answer to that? A. I would like to know what you are reading from before I answer the question.

Examiner Averill: Just tell him if he wants to know. He has the right to inquire of that.

Mr. Weisman: If your Honor please, I made no reference to any reading from a book, and I simply asked the flat question which I think I am entitled to do. However, I have no objection to telling the witness, in order to satiate his ungovernable currosity, and I will say that I am reading from the book. I used the book to help me frame the question.

11040

By Mr. Weisman.

Q. However, I will tell you that in my question, I used Dr. Nystrom's magnus opus. A. It does not make much difference, but I would just like to know. Will you read it now the way it is?

Q. (Question read.) A. I have not.

Q. If Dr. Nystrom so holds, you would differ with him?
A. I would, yes.

Q. Dr. Nystrom tells us that in his opinion—at page 243 of his book—"Design protection is to the fashion industries what rules of the game are to the major sports." Would you agree with that, or is that an erroneous conclusion, in your opinion?

Mr. Haycraft: Objection.

Examiner Averill: Sustained—no, I think I will let him answer that.

The Witness: What is the question?

By Mr. Weisman.

11042

Q. "Design protection is to the fashion industries what rules of the game are to the major sports"? A. No, and decidedly no.

Q. You would disagree with that? A. Yes.

Q. I also see that Dr. Nystrom says, and I would like to know in your opinion whether you agree with of differ from Dr. Nystrom in this regard: "The present system permitting widespread unauthorized copying of designs created by others is essentially and morally, though not yet legally, as unfair and as wrong as the theft of merchandise." Do you agree with that?

Mr. Haycraft: The same objection. Examiner Averill: The same ruling.

A. I think not. I do not agree. At least, I would want to qualify it if I did answer it.

By Mr. Weisman.

Q. In your opinion, do: "Most of the copyists find it much easier and less expensive and, on the whole, more profitable to take designs to which others have given great energy and ability, and which already have obtained a cer-

tain degree of popular approval, and reproduce them, if possible, at lower prices and sell them in competition with their originators rather than to attempt to create and design for themselves." Do you find that to be the fact? A Are you putting that in the form of a question?

Mr. Weisman: Let me read it. Examiner Averill: No, no, no.

.The Witness: I would like to look at it.

By Mr. Weisman.

Q. What was that? A. I say, I would like to look at it.

Q. No, I want the reporter to read it back, and I want to hold the book and check it up and see whether the record is right, and then if you can answer my question, all right, and if you cannot, all right, too.

Mr. Haycraft: Well, I submit, Mr. Examiner, the witness is entitled to see the book.

Mr. Weisman: I submit he is not entitled to see the book, but he is entitled to the question that was asked him, or to say whether he can or not.

Mr. Haycraft: I think he is entitled to see the book.

Examiner Averill: The question as put to him can be considered by the witness, and he can either say that he cannot answer it, or that he can answer is as it is put to him, and if he cannot, say so, but he is not entitled to see the book.

Mr. Haycraft: I ask for an exception to your Honor's ruling.

Examiner Averill Noted.

Q. Now, will the reporter read the question, and if he finds he cannot answer it, just say so, and if you can as swer it, just answer it the best you can. A. It is rather long, and that is the reason I wanted to look at it in the book.

11045

Examiner Averill: The reporter can read the question to you again.

Q. (Question read.) A. It is a statement put in a form that I do not believe I can answer, but I could answer it if I am allowed to answer it in my own way, but I cannot answer that "yes" or "no", that is what I mean. I think I would like to hear the question again.

Examiner Averill: Read the question again, Mr. Reporter.

(Question read.).

Mr. Haycraft: I object to that as having five or six questions in one. Furthermore, the witness is not qualified to pass upon the possibilities of a profitable return to the manufacturer, or to know what their capacities are, or otherwise, as the case may be.

Mr. Weisman: He can either say yes he knows, or he does not know.

Examiner Averill: I think the question, the complexity of the question is one which the witness can take into his own consideration. The desires. The objection is overruled, and if the witness finds the question is too involved, and he cannot answer it, he may say so, but otherwise he may answer it.

A. I would like to answer that if it were broken down into—it seems to me there are three or four divisions of it, because I knew that I can see three or four in there myself.

11049

By Mr. Weisman.

Q. Will you agree with this statement as a general statement of fact concerning the industry—

Mr. Weisman: Read the question again?

Q. (Question reads) A. No, I would not like to agree to that in a blanket form. If you will break it down, all right, and I will agree or disagree with it. I am not trying to be evasive, but I am really trying to answer these things.

By Mr. Weisman.

Q. Let me ask you this: In your experience, is it not your opinion that these copyists or pirating manufacturers find it much easier and less expensive to reproduce an original and sell them in competition with the originators rather than to attempt to create or design for themselves?

11051

Mr. Haycraft: I object as entirely incompetent for any purpose whatsoever.

Examiner Averill: Overruled.

A. There are two or three questions there. If you will break it down, if it is cheaper to reproduce when they copy, if it is cheaper to reproduce, then I can answer that and then I will take up the other part.

Mr. Weisman: May I have the question read again?

Examiner Averill: Oh, no, no, no. If you have it read again and again where will we get?

Mr. Weisman: He says he cannot answer it in that form, and that is the reason I wanted to have the question read.

Examiner Averill: You have the books right in front of you and you know what you read from

Mr. Weisman: I tried to break it up. Examiner Averill: I do not blame him if he can

not answer it.

By Mr. Weisman.

Q. In this form, you, as an expert, say you cannot answer that question? A. No, sir; I cannot.

Q. All right, then, just tell us so. In your experience in this business, have you from time to time met copvists who would state to you that their lines contained copies of the best selling numbers of the best creators in the particular field? A. Oh, I have met copyists. I do not recall that the comments have ever been qualified as being copies of the best creators in the field.

Q. Is it not a common practice for these copyists to make known that their copies are copies of the leading designers and originators in the business? A. They do 11054 not say, they do not usually say that in so many words, but they do generally say that they have copied them, as to whether it is made in Paris or locally.

Q. Speaking locally, do they not generally tell you that they have copied these people so that you might-so that the one who was to purchase might know that he is getting copies of a particular designer that they refer to. or originator? A. Well, they make a statement that they have copies of other people's merchandise, whether it is retail or wholesale; they make a statement of that kind.

Q. Those statements are usually made to induce the purchaser to purchase from them rather than from the originator: is that so?

Mr. Haycraft: I object to the form of that ques-

Examiner Averill: Overruled.

Mr. Haycraft: How can this witness know what the other man is trying to do?

Examiner Averill: He is giving his opinion. All of this is opinion evidence.

A. It is given as a part of their selling talk.

By Mr. Weisman.

Q. That is the best answer that you are willing to give?

A. That is the answer.

Q. I want to know whether that is the best answer you can give. A. I do not know, if I spent a lot of time I could probably answer you better; I do not know; it seems to me that is a good answer.

Q. Dr. Nystrom advises us of his opinion as follows, and

I would like to know whether or not you agree with this: "The present lack of a design registration law an effect of copying is considered a lawful activity by the courts amounts to the right to despoil the business of others. It is entirely illogical that this condition should be allowed to continue." Would you agree with or differ from that statement? A. I differ from it. Why do you not ask me why?

Examiner Averill: I do not see how we can go much there with this type of interrogation.

Mr. Weisman: I only have three more questions. Examiner Averill: I do not see where we are getting anywhere with it.

(There was a discussion off the record.)

By Mr. Weisman.

Q. Speaking of design protection, Dr. Nystrom states:
"Design protection would help to establish order in what
is now chaos." Do you agree that design protection would
help to establish order in what is now chaos?

Mr. Haycraft: I object to that as not being established; and, furthermore, we do not know what he means by chaos.

Mr. Weisman: I want to know what he thinks about that. This man is an expert.

Mr. Haycraft: He did not read the book.

Mr. Weisman: His boss wrote it. This man was his superior in the A.M.C., and he is the man who wrote it.

Examiner Averill: I overrule that objection, but I am not going to let this go on any further. Answer if you can and then we will quit.

A. I disagree with it.

By Mr. Weisman.

Q. That is all. A. I am not, I, I, I, I will be glad to qualify my statement if I answered it, see?

Q. Dr. Nystrom states that in his opinion the tidal wave of copying that has characterized the fashion industry during the past years——.

Examiner Averill: When was this book written? Mr. Weisman: This book was—it is the edition of 1932.

Examiner Averill: Proceed.

By Mr. Weisman.

Q.—came since the World War. Would you agree with that? A. No.

Q. In other words, you differ with that statement? A. Yes. Ask me why, will you?

Q. I will ask you to keep still or I will ask the Court to punish you as a recalcitrant, obstreperous and pugnacious witness. A. That is your privilege.

11061

By Mr. Weisman.

Q. I understood you to say that it was a part of your duties to see that the stores got the service out of this market they wanted; is that correct? A. That is right.

Q. In connection with such service, do you fix what service they want, or do they tell you what service they want? A. They tell me.

Q. And you carry out those orders; is that correct? A. What do you mean by "orders"?

Q. Well, I do not mean it in any bad sense. They come in and tell you what they want you to do for them, and you do the best you can, and do it for them? A. Yes, if the individual store's request comes within the broad policies of the organization, why, I do.

Q. Yes, within the broad policy of your organization, do you include the getting for your customers of special discounts?

11063

Mr. Haycraft: Objected to as irrelevant and immaterial.

Examiner Averill: The objection is overruled. I think he has a right to show what services he attempts to render his clientele. Go ahead, sir.

A. Well, we certainly assist our accounts in trading with the manufacturers, and many of the orders we place ourselves. We do trade with the manufacturers in the industry for the best price possible.

Q. What form? What do you do to get these, in connection with this trading?

11064

By Mr. Weisman.

Q. To your knowledge, do you know the discounts that generally prevail in the ready-to-wear industry? A. Yes, I think so.

Q. What are those discounts in the ladies' ready to wear? When we say that, we mean dresses.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Averill: Objection overruled for the moment.

A. You mean-at what period are you talking about?

By Mr. Weisman.

Q. Well, in 1935. A. Eight per cent.

Q. Well, is that all, 8 per cent.? Do you not want to add something to that? A. I don't know of any other—

Q. All right, if you do not. A. —of any other prevailing discounts to the industry.

Q. All right, if you do not. Now, then, in coats and suits, what was it? A. What period?

Q. Same period. A. Eight per cent. 1935.

Q. All right. Now, during 1935, did you ever obtain for your customers, in line with getting this special service out of the market, a discount from the manufacturers or sellers, which was greater than that regular usual customer's discount?

By Mr. Weisman.

Q. On your direct testimony at page 6093 of the record, you stated that it was part of your duties to see that the stores were getting the service out of the market that hey wanted. Do you remember so testifying? A. I remember in substance so testifying.

Q. Now, is part of the service that these stores were getting, or wanted to get out of the market, the granting to them of special discounts and rebates?

Mr. Martin: Objected to.

By Mr. Weisman.

Q. Was part of these special services the obtainment, by you, in the ladies' ready-to-wear market of advertising rebates from the customers that you do business with?

11066

Mr. Martin: I object.

Mr. Haycraft: I object.

Examiner Averill: Objection sustained for the same reason.

Mr. Weisman: Exception.

Examiner Averill: Noted.

By Mr. Weisman.

Q. Was part of these special services that you sought to get out of this market the confinement of a particular manufacturer's copies to a particular party, a member of the A.M.C.A., making him the sole person who could 11069 handle those goods in that city?

Mr. Haycraft: I object for the reasons heretofore urged and also the use of the phrase "special services," as no foundation has been laid for that

Examiner Averill: Objection sustained.

Mr. Weisman: Exception.

Examiner Averill: Noted.

By Mr. Weisman.

Q. Did you, in attempting to get the services out of the New York market, attempt to get services for your client, or consideration for your client over and beyond that which was customarily and ordinarily given by the manufacturers to the regular and ordinary purchasers in that market?

11070

Mr. Martin: Same objection.

Mr. Haycraft: Same objection.

Examiner Averill: The same ruling.

Mr. Weisman: Exception.

Examiner Averill: Noted.

By Mr. Weisman.

Q. Was part of the services that you sought to obtain for your clients out of this market a preferential shipment of merchandise to your accounts?

Mr. Haycraft: Same objection.

Examiner Averill: Overruled-sustained, I mean.

Mr. Weisman: Sustained?

Examiner Averill: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Was part of the services that you sought to get out of this market for your members, the right of cancellation in connection with orders of which was not generally or usually extended to other purchasers in the ordinary course and conduct of the business?

Mr. Haycraft: Same objection.

Examiner Averill: Sustained.

Mr. Weisman: Exception.

Examiner Averill: Noted.

By Mr. Weisman.

Q. Was part of the special services that you sought to get for your members out of this market the right to have merchandise which was manufactured by the manufacturers sent to your members on consignment?

Mr. Martin: The same objection.

Mr. Haycraft: Same objection.

Examiner Averill: Sustained.

Mr. Weisman: Exception.

Examiner Averill: Noted.

11072

By Mr. Weisman.

Q. Mr. Bergdahl- A. Yes.

Mr. Weisman: May I have Respondents' Exhibit 920?

Mr. Martin: You mean Commission's Exhibit 920.

Mr. Weisman: Is that it?

Mr. Martin: Yes.

By Mr. Weisman.

Q. In a letter written by you and marked here as Commission's Exhibit 920, you stated, Mr. Bergdahl, the following: "We have repeatedly suggested to the Guild executives that they could obtain better co-operation from retailers if they would declare themselves, as an organization, existing solely for the purpose of style piracy elimination and that they would not be interested in assuming trade association activities." Do you remember that? A Did they say "we"?

Q. They did say "we." A. That is right.

Q. When you said that what trade association activities were you referring to? A. May I see the letter?

Q. Certainly.

. (Counsel hands letter to the witness.)

11076 By Mr. Weisman.

Q. Do you see it? A. Well, I do not know.

Q. No? A. I do not see that particular quotation on the letter.

Q. You do not see it? A. I cannot find it immediately.

Q. I will show it to you. A. Will you?

Q. It is right here. A. What?

Q. "We have repeatedly suggested to the Guild executives" and so forth; do you see it now? A. Yes.

Q. Answer the question. A. Now, what is the question?

Mr. Weisman: Let the question be read, please. Examiner Averill: The question may be read. (The question was read.)

By Mr. Weisman.

Q. Please answer the question. A. I was—I was—I was—I was—I was referring to, first, trade association activities in general.

Examiner Averill: Let me ask him a few questions here and I think I can clear this up.

11078

By Examiner Averill.

Q. What one, any particular one? If you had any one in particular, would you name it? A. Well, could I just explain my background?

Q. Yes. A. When the F.O.G.A. started, the resident officers asked—

Q. No, no, any one particular trade association activity that you had in mind. A. Well, now, I was a member of this group, I have had to explain exactly—

Mr. Weisman (interposing): Just a moment.

The Witness: —just what happened.

Mr. Weisman: If you will wait just a moment, please, I am addressing the Court and not you. I object to that, Mr. Examiner, as not responsive. Here is a question that is very clear. This witness wrote a letter on December 4, and in that he referred to trade association activities and I am asking him the direct question, what trade association activities do you refer to.

By Examiner Averill.

- Q. Yes, that is the question, Mr. Witness. If you will kindly address your reply to that question: What trade association activities do you refer to? The letter refers to some trade association activities, at least it calls then trade association activities. Tell us what activities you refer to. That is all. A. Well, trade association activities in particular.
 - Q. What are the trade association activities? I do not know. A. Well, they may be anything that a trade as sociation wants them to be.

Q. I know, but you must have had in mind some activities to which you referred. A. Well, I had in mind all—all those—you see this was a marriage between retailer and manufacturers, if you please; that is, the F.O.G.A and if they were—we had no objection to trade association activities because we have admitted that, because we have admitted the fact that certain trade association activities were taken up with us in 1934 and they were taken up with us and we agreed to them, the retailers agreed to them.

But, since this was a marriage, if you please, between the retailer and the manufacturer, we told Mr. Rentner that there should be no trade association activities made entirely by the Guild and enforced on the retailers without the retailers' consent. And from the beginning, the very beginning, Mr. Rentner told me and told the members of the A.B.O. particularly that that was the understanding and this was never going to be attrade association because we had enough trade associations in the field already. I think there were three in the industry.

- Q. That does not answer the question yet, sir. A. No!
- Q. You have gotten away from the question. A. Have
- Q. There must have been some activities you had mind. Tell us what they were, if you know. A. Well, I

think that—I think, in particular, that the dress industry took over all of the trade practices of the—of the N.R.A. without asking the retailers at all, maybe more or less of those—without asking the retailers at all whether that would be O.K.

The retailers have never said they could not have trade association activities. But, inasmuch as this was a combined retail and manufacturer organization, they should not do all of the dictating on trade practices, that we ought to have some meeting of minds on the trade practices, and that is what I had reference to.

The A.B.O. repeatedly told Mr. Rentner and Mr. Golby that they had really never agreed to all of those trade association activities, but not that they objected to them, but they did not think that they should be subjected to them without consideration, upon the Guild, without having some consideration.

Q. As I recall it, it was all through your testimony, you never referred to any trade association activities other than the piracy question which the F.O.G.A. attempted in any way to enforce against you or your members, is that not so?

Mr. Haycraft: There is the letter of July 1, 1935, which gives us a list of certain practices which the F.O.G.A. sent out.

Examiner Averill: If that is so, let the witness read the letter, because he does not seem to know.

Mr. Haycraft: That is a letter from the Guild.

The Witness: I think we put in that letter. They took over the N.R.A. trade practices and I think I made a notation on the letter to that effect that was put in evidence here. In fact, I think I have written on it "As a result of the N.R.A." It is in there among those letters somewhere.

Examiner Averill: You mean the recent ones?

11084

Mr. Weisman: No, no. I do not think Mr. Hay craft has reference to that one.

Mr. Haycraft: It is one of those in this group (indicating a group of exhibits).

Examiner Averill: If it is in there, let us get it and let the witness refresh his recollection because he does not seem to have any recollection in regard to it.

Mr. Weisman: I think I can refresh his recollection if he really wants to be refreshed.

.Mr. Haycraft. I think it is in there.

The Witness: If I need it, I will tell you.

Mr. Weisman: Do not be bashful.

Mr. Haycraft: It had on it "as a result of the N.R.A.," as I recall.

Mr. Weisman: I do not think we need go into that. I think I can carry on more rapidly by asking him another question.

Examiner Averill: Do so.

By Mr. Weisman.

Q. You still have not told me what you meant when you be note, referring to the Guild—and I think they should not be interested in assuming trade association activities, referring to the phrase "trade association activities," what trade association activities did you have reference to by the Guild? A. Well, all of the activities that are performed by a trade association.

- Q. You did not have any particular one in mind? A No, sir; I did not.
- Q. In the course of your statement, you stated to the Court a few moments ago that the Guild, meaning the Fashion Originators Guild of America, took over the fair trade practices as they were contained in the code, and made them a part of their fair trade practices; is that so; did you say that? A. In substance, I think that is correct

- Q. Do you not know that the Guild was formed prior to the passage of the National Industrial Recovery Act? A. Yes, sir; I recall that.
- Q. Do you met know, as an expert with all of your knowledge, that it was not the N.R.A. from which we took up certain fair practices, but the N.R.A. took the fair trade practices from the F.O.G.A. as they had formulated them? A. No, I did not.
- Q. You never learned that? A. No, sir; I never did.
- Q. All right. You may have been ignorant on that. A. And I was active in it, too.
- Q. Was one of the trade practices that you had reference to in your letter, Commission's Exhibit No. 920, the trade practice which had reference to trade discount, and which read as follows: "No discount shall be given to any retailer in excess of the terms 8 per cent. 10 days E.O.M." A. I never did. I just got through telling you that I did not have reference to any particular discount, or those things, and I am not trying to evade anything. I did not mean that, but I had in mind, Judge, trade association activities, as such, as affecting retailers, that there should be no such of those without consulting us.
- Q. In other words, your objection was not to the— A. What is that?
- Q. In other words, your objection was not to the antipiracy, but your main and chief objection, as evidenced by that letter of December 4, as the trade association activities of the Guild? A. No. sir.
- Q. What did you mean when you wrote: "We can get better co-operation if the Guild would declare itself as an organization existing solely for the purpose of style piracy elimination, and that they would not be interested in assuming trade association activities." What did you mean to convey by that? Did you not mean to convey the idea that you had told the Guild executives that your objection

11090

was to the trade association activities? A. What was that question?

Mr. Weisman: Let the question be read. (Question read.)

The Witness; I did not get it.

Mr. Weisman: Read it to him again.

(Question again read.)

The Witness: I do not get it.

Mr. Weisman: Give it to him again.

(Question again read.)

By Mr. Weisman.

11093

11094

- Q. Can you answer it now? A. Yes. Well, that was one of the things that we had told them was wrong with their machinery from the beginning—from the beginning—not at the end or any other time, but from the beginning of the Guild's program we told them that we——
 - Q. Who is "we"?? A. "We" refers to the A.B.O.
- Q. Did you ever refer to that before December 4, to that?
 A. I am not sure that I wrote to them.
- Q. Well, we will take that up. Did you ever write to them prior to December 4 about that? A. I am not sure
- Q. Did you ever see a letter in that regard? A. Waita minute. I am not sure whether some of the letters do not contain something about that.
- Q. Can you produce a single letter that has it in it? A I may be able to.
- Q. No, no, no. Will you go over your correspondence between now and to-morrow morning and see if you can bring us a single letter to that effect? A. I will try.
 - Q. Now, will you? A. I will try.
- Q. No, will you go through the correspondence to see!

 A. Positively.

Mr. Haycraft: What is that?

Mr. Weisman: I asked the witness if he would go through his correspondence and see if he could find a single letter in regard to trade association activities prior to the letter of December 4, and if so bring it down here to-morrow morning, and he has stated that he would. Any objection?

Mr. Haycraft: I just wanted to hear the ques-

A. I said I might be able to and I will try to. I candefinitely well substantiate it in person, and with other witnesses.

By Mr. Weisman.

11096

- Q. You tell that to Mr. Haycraft. A. I think he knows it.
 - Q. He does? A. Yes.
- Q. Have you any recollection at this time as to when the break definitely came between the Guild and the A.M.C.? A. If I know?
- Q. Yes. A. I think the break came in February, about the second week in February.
 - Q. What year? A. 1936.

Examiner Averill: '36?' The Witness: 1936.

By Mr. Weisman.

11097

Q. Have you any idea of any break in, or, rather, any break—but before I get to that, have you any idea of any particular thing, or, to put it in another way, any particular communication which immediately preceded that break in relations? A. Why, yes, I think so. There were several communications, I guess, or telephone calls, and so forth, in connection with the matter.

- Q. Do you remember the famous Reilly letter? A. I did not know it was famous, but I remember it.
- Q. Would you say it was infamous? A. No. I would not. I do not think that either one of those terms would be applicable.

Mr. Haycraft: I object to that as an improper characterization of the letter.

Mr. Weisman: He knows what I am talking about.

Mr. Haycraft: I object to the characterization. Examiner Averill: Proceed.

11099 By Mr. Weisman.

Q. Well, we will come back to that in a moment. A All right.

Q. But you remember the Reilly letter that was sent out in February, was it—about what date? A. Well, the date is on it, it is the second week in February, I think.

Q. Was it February 16? A. I do not recall.

Q. Or February 17? A. Look at it and see.

Q. You remember the substance of that letter? A. I think I do.

Q. What was the substance of that letter, as you remember it? A. The substance of the letter, as I recall it, was that, as to members of the Guild, that we could get along with them only—or perhaps I should say that we could go along with them—I will say, definitely, that we could go along with them only as originally agreed upon; namely, that we would co-operate in making returns down to and including \$10.75. We stated, furthermore, that it was never our understanding that we were to be obligated by the trade practices that the Guild might adopt without consulting us. I do not know that that is in there, but that is the extent of the letter.

- Q. That is right. Now, when you sent that letter which is—you saw it before it was sent, did you? A. I do not recall, but I think I did.
- Q. And you wrote in there the following: "We have been authorized by the store principals of eighteen member stores of this association to inform you that from this day on we would like to be put on record as being willing to co-operate with the F.O.G.A. only on the matter of style piracy elimination, as originally agreed." A. Uh-huh.
 - Q. Uh-huh. What do you mean by "uh-huh?" A. Yes.
- Q. Did you not expect that after that letter was written the members of the F.O.G.A. would no longer be willing to deal with those eighteen member stores? A. We did not know what they would do. We hoped that they would see it our way and that they would not act precipitantly and that they would reconsider the action they had already taken.
- Q. Did you ever say to anybody in words or substance that the F.O.G.A. would not dare red card a member of the A.M.C.? A. I do not recall it.
 - Q. Might you have said that? A. I may have.
- Q. As a matter of fact, wasn't it your belief at the time that letter was sent to the F.O.G.A. that by reason of the huge volume of purchasers which were controlled by the A.M.C. that the members of the F.O.G.A. would not have sufficient courage to red card any non-co-operating A.M.C. member? A. That was not my interpretation. I can give you my interpretation.

Mr. Weisman: Just read the question to the witness. He either does not understand, or will not understand.

The Witness: That is not my interpretation.

. By Mr. Weisman.

Q. I did not ask you for your interpretation. A. No. Do you—but you can have my thoughts in my mind on it, if you want.

11102

11103

5,00

Q. No, I do not want that, I want to get an answer to the question. You can either answer it "yes" or "no."

Mr. Weisman: I will ask that the question be read again.

Q. (The question was read.) A. I would like to have it again.

Mr. Weisman: Again.

Q. (The question was read.) A. That was not my reasoning process at all.

11105

Examiner Averill: The letter to which counsel refers was a letter, a copy of which is now in evidence as Commission's Exhibit No. 924.

Mr. Haycraft: Also Respondents' Exhibit No. 37.

Mr. Weisman: It is Respondents' Exhibit 37?

Mr. Haycraft: Yes.

Examiner Averill: And it is also Commission's Exhibit No. 924.

Mr. Weisman: Well.

Mr. Haycraft: Apparently both.

By Mr. Weisman.

11106

Q. Do you know whether or not prior to the formation of the Guild and the co-operation with it by retail stores that retailers, themselves, had frequently resorted to copying; that is, that they caused articles that they received originals to come in their hands and then sent them out to special manufacturers to be copied? A. Do I know anything of such transactions?

Q. Yes. A. No, but I have heard of such.

Q. Did you ever, personally, take part in such? A. No, sir.

- Q. You are certain about that? A. Positively.
- Q. Do you remember an occasion when Abraham & Straus had sent out some linens and had them made up into copies? A. No, sir. I remember the transaction, but not as you said it.
- Q. Do you remember the action when the Guild complained that Abraham & Straus had ordered some goods? A. Yes.
- Q. Will you give us your recollection of what the facts incident to that transaction were?

Examiner Averill: Yes, if you will just do so. Now, that is a very clear and direct question, and I am going to ask you to answer it. I am afraid the witness did not understand the previous question.

Mr. Weisman: Oh, he understood it perfectly well. He is dodging for a little time.

A. Max I tell it in my own words?

Examiner Averill: That is what he asked you to do. Go on. Go on. Go on.

The Witness: As I recall it, someone from Abraham & Straus, Miss Kirpel, called me and said that Mr. Post had talked to her or called her and asked her to take off some dresses "off sale" that they had featured in a Sunday advertisement in which they had stated that they were copies of "Miami fashions," I think it was, Miami or Palm Beach, or something like that.

\$5.95 or \$6.95 retail. I said, "Well, I will talk to Mr. Post about it." So, I called up Mr. Post and said, "What about this Abraham & Straus transaction?" As I recall it, he said, "Oh, you are going to tell me that they get an exemption, is it, because of the price line?"

11108

I said, "Yes, that is the idea." And he said, "Well, in this case, I will be honest with you, I will be frank with you about the matter, I am going to give you a red card on this," so I said, "Oh, I do not think you will, and maybe you will, but if you do we do not think you ought to handle us individually as individuals because you are a big organization and can lick any individual retailer, and so if you want to send a red card to Abraham & Straus"—no, he did not say "send a red card," he said, "if you want to, we will return the agreement or declaration to you of Abraham & Straus."

11111

I think I said, "No, if you send it to them that is your business, but if you do you had better send back all of our agreements and we will probably talk it over." And I said, "Furthermore, I would like to discuss this with the A.B.O. because they know what the understanding is, and they might want to ask me about the matter and take me up on this, because you are not going to handle retailers as individuals."

Burgie, let us talk this over." I said, "All right, you know I have got that kind of an agreement with you on low-end merchandise, and while it is too bad the advertisement ran that way, still, it ran, and that is the way the industry is doing it, the retail industry," and I said, "I do not see that they done anything wrong," Well, it was his next move, and I guess Mr. Post reconsidered because nothing more came of the transaction. And that

"Well," he said, "you do not need to burn up,

11112

Q. Let me see if I can help you refresh your recollection a little bit. A. Yes, sir.

is as far as I know the truth about it.

- Q. Do you remember from which company the original of the dress advertised was obtained? A. Well, I was subsequently informed that the originals, I believe, were from Goodsteins. Is that right?
- Q. I am asking you. Do you remember who had ordered the goods to be made up? A. No, sir; I do not know.
 - Q. Who is Miss Dean? A. She is one of my buyers.
 - Q. She works under you? . A. Yes, sir.
- Q. Does that bring any association—does that name bring anything to your mind in connection with this? A. Just how do you mean?
- Q. I want to know whether or not the name "Dean" associated with the Abraham & Straus transaction, brings anything to your mind? A. I know that that is her department.

- Q. Do you not know, and do you not remember that it was Miss Dean, your buyer, who ordered these goods made up for Abraham & Straus? A. No, sir; I do not.
 - Q. You do not remember that? A. No, I do not.
- Q. That comes as a total surprise to you? A. No, it does not come as a surprise. She may have done so. I will not deny it, but I do not know.
- Q. Let us see whether this is a fair statement of what happened at that time— A. If I know I will tell you—
- Q. Let us see if this refreshes your recollection; that the advertisement appeared in a paper wherein these copies were flagrantly advertised as copies—

Mr. Haycraft: I object to "flagrantly."

11115

By Mr. Weisman.

- Q. Well, openly; do you remember that? A. I do not think I ever saw the advertisement, but I will take your word for it.
- Q. You can do so safely. Do you remember Mr. Post telling you that upon seeing the advertisement, and this

matter being brought to his attention, that he communicated with Abraham & Straus before he spoke with you.

A. In the conversation he told me he had called Abraham

& Straus about the matter.

Q. Do you remember him saying that to you, in words or substance, that Neil Morse of Abraham & Straus had stated that the position of the Guild was fair and correct?

A. No, I did not understand it that way.

- Q. And did he tell you at any time that A. & S., through their representatives, did not claim that they had an exemption, but stated to Mr. Post that they wished an exception to be made in this case because the merchandise that is, the linen, which went into the copies, had been
- specially ordered, and that if they did not take it in it would be a complete loss? Does that refresh your recollection to any degree? A. No.
 - Q. You never- A. No.
 - Q. You never heard about that before? A. No, I did not, and Mr. Post did not tell me in that conversation any thing of that kind.
 - Q. Did he tell you anything of that kind in any other conversation? A. We never had any other conversation about that, that I recall.
 - Q. Now, your recollection is that Mr. Post said that if you do not stop the copies, I will send back the declaration of co-operation? A. The way we did to Franklin Simons.
- 21118 Q. The way we did to Franklin Simons, and you said well, if you do that, you had better send back all the agreements for the member stores; is that it? A. Because you are not going to handle us——
 - Q. Yea -A, -as individuals.
 - Q. Yes. A. We are too big and powerful, we would will with every fight.
 - Q. Did you tell him that, too? A. Yes, yes, sir.

Q. And, therefore, if any member of yours did something which the Guild thought was wrong you had made up your mind that all the A.M.C. stores would act in concert to prevent the Guild from taking such punitive action as it, the Guild, thought was proper; is that it? A. I had made up my mind that our stores would get a fair deal, if I could help them get it.

Q. And you thought that they would get such a fair deal by, in every case, the stores acting in concert? A. Why, I thought it would be a little bit better chance of having a fair deal.

Q. I see. A. Than if we were entirely in the hands of the F.O.G.A.

11120

- Q. I see. And did you talk this over with the various store heads to ask them whether or not they acquiesced in such a program on your part? A. Well, I had a lot of discussion with store owners.
- Q. Well, let us see. A. They trusted me, I will say that; they thought I understood the situation, and they thought that I was trying to work it out fairly for them, and for the Guild.
- Q. And A. And they knew I was working for the Guild. They certainly knew that. My letters are evidence of that.
- Q. And your idea of working it out fairly was that any time the Guild would threaten, or state that an action on the part of one of your stores was a failure to co-operate, and they would therefore seek to return your declaration, that you would say to them. in words or substance, you better send them all on. A. Yes, sir; I felt—

11121

- Q. All right, you have answered. A. That is not an answer.
 - Q. It is quite sufficient for me.

Examiner Averill: No.

Mr. Haycraft: Let him explain his answer.

Examiner Averill: He can explain his answer, sir.

Mr. Weisman: All right, Judge. Examiner Averill: Yes, go ahead.

A. I felt that it would be unfair to precipitately send back a declaration on an individual retailer at any time without a hearing; in other words, to convict him, and hang him, and throw him out in the dump without giving him a chance to explain himself. I always thought that was—

11123

By Mr. Weisman.

Q. How often- A. I always thought-

Q. How often have you convicted and hung and thrown out onto the dump hundreds of retailers by your co-operative action, can you tell me that?

' Mr. Haycraft: I object. He has not finished his answer.

A. You point it out and I will answer.

Examiner Averill: Had you finished? The Witness: I think,

By Mr. Weisman,

- Q. What retailer has been convicted and hung and thrown out into the dumps? A. We were.
 - Q. Who is on the dumps? A. By the F.O.G.A.
- Q. Who is on the dumps? A. As far as we were concerned, we were certainly not permitted in your place of business, and we never got a hearing to explain why, or anything else.
- Q. In other words, then, you would state that they stores representing a buying power in ladies' ready-to-

wear, as you have stated it, which purchase each year about \$50,000,000? A. That is coats, dresses, skirts—

Q. Yes. A. -sportswear--

Q. Yes. A.—that's a lot of lines that are not pertaining to dresses.

Q. Yes. A. I want to make it clear that it covers upstairs and downstairs.

Q. Yes, you have— A. Coats, dresses, sportswear and millinery and a lot of other things.

Q. So now a little bit for a moment about this A.M.C. This A.M.C., how is it governed?

Examiner Averill; He has told you that; he has told you that.

Mr. Haycraft: Yes, that has been told.

Examiner Averill: He has told us that on-

Mr. Weisman: I want to make it very plain.

Mr. Haycraft: I object to further interrogation on it.

Examiner Averill: Sustained. It has been told. Any specific point in connection with its government, you may have that.

Mr. Weisman: Yes.

Examiner Averill: But it has been told. He has told Mr. Haycraft and told you at the opening

Mr. Weisman: I do not think he told Mr. Hay-craft.

Examiner Averill: Yes, and then he told you, at the opening of the examination.

By Mr. Weisman.

Q. Is this correct, that the executives of these twenty stores, concerning whose purchasing power in the ladies' ready-to-wear and misses' and juniors' you have testified to, constitute the governing body of this A.M.C.?

Herbert L. Bergdahl-For Commission-Gross.

Mr. Martin: Objected to as having already been answered.

Examiner Averill: It has been answered, but it is easier for him to say "yes" and go on.

A. The store principals constitute—the store owners constitute the governing body of the A.M.C.

By Mr. Weisman.

- Q. Yes. A. They own the office and it is their office.
- Q. Well, a number of these stores of yours send in their orders to your office? A. Most of them do send in orders to the office.
- Q. Yes. A. Not all their orders, but they send in orders.
 - Q. They send in orders? A. Yes.
- Q. And you have buyers in various departments? A We have what we call representatives, market representatives, they are buyers.
- Q. Then, why do you not say "yes." A. No, but we call them representatives and that is exactly what we mean; they are representatives for the store buyers in this market.
- Q. Yes. A. And they not only buy, they do all kinds of things; they give information, and they just do—
- Q. Miss Dean's one of those, is she not? A. Yes, I told you that before.
- Q. Suppose you get a lot of orders in, is it the practice, from time to time, of the A.M.C. to take a large number of orders, and place these orders with the manufacturers? A. Well, that may happen, but that is not the common practice, I mean. You mean bulk them?
- Q. Yes, you know what I mean. A. Yes, but that does not happen very often.
- Q. Well— A. It may happen, but it is not the common practice, I will say—I will put it that way.

Q. Do you have collections to gather in your place, weekly? A. No-how do you mean, collections?

Q. Well, what did you mean when you said, "No"? A. Well, I did not quite understand you, what do you mean, collections?

Q. Well, if you did not understand me, what did you

Examiner Averill: What do you mean by collections, please. Tell us what you mean?

Mr. Weisman: I want to find out what he said, "No" to.

Examiner Averill: He told you he just said that in haste. Now, he is asking what you mean: I do not know what you mean. I thought maybe they passed the hat, I thought maybe they passed the hat.

11132

By Mr. Weisman.

. Q. Collection of merchandise. A. Collection of merchandise? Why, no, we do not have that.

Q. Is it- A. We do not have that as weekly; the merchandise men themselves come up to our office every morning and exhibit merchandise for our consideration.

Q. Do you know what the term "collection" means in the dress industry? A. Why, I never-why I never-

Q. You never heard of it? A. I never used it in connection with my work.

Q. No, but did you ever hear it? A. A manufacturer's 11133. collection?

Q. Yes. A. Why, yes, it is his line of merchandise.

Q. That is what it is, and it is generally understood as that? A. We do not have any collection in our office.

Q. Oh, no, but in the business, is there not a custom of usage that the word "collection" refers to-not to the passing of a hat-but a manufacturer's line; is that not it? A. Yes, yes.

- Q. And did you know when I asked you that question a moment ago that that is what I was referring to? A. No. I'did not.
 - Q. I see. A. No, I did not.
- Q. I see, you— A. I thought you might have mean group meetings, or buying meetings.
 - Q. Now- A. Or other meetings. I am not-
- Q. I see. Now-do you sit in with the executive committee? A. Why, I have, once or twice, but generally not
- Q. Well, did you sit in with the executive committee of the A.M.C. when they voted \$250,000—I will withdraw that. Did you ever hear that the executive committee of the A.M.C. voted the sum of \$250,000, to subsidize dress manufacturers? A. No.

Mr. Haycraft: That is objected.

By Mr. Weisman.

Q. What?

Mr. Martin: That is objected to.

Mr. Feldman: He said no. Let him answer.

By Mr. Weisman.

Q. Did you ever hear that they had voted a sum to subsidize dress manufacturers?

11136

Mr. Haycraft: Objected to, unless I know what he is talking about.

Mr. Weisman: It is a very plain question. Yes know what I am talking about. It is right in the evidence here. One of the subsidizers testified to it.

Mr. Haycraft: You said so.

Mr. Weisman: Well, do you deny it? Turn to Dr. Tily's testimony. What do you mean "I said so"?

Mr. Haycraft: That is what I mean.
Mr. Weisman: Do you deny he said it?

Mr. Haycraft: I object to you characterizing this evidence to suit yourself.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Weisman: Then, may I make a statement for the record?

Examiner Averill: I do not want it to appear on the record. All I want you to do is go on with your questioning of the witness.

(Last question read.)

Mr. Haycraft: I object to the use of the word "subsidize" unless the witness knows about it.

Examiner Averill: The witness may answer the question. Go ahead and answer it if you can.

A. We never did subsidize any manufacturers.

By Mr. Weisman.

Q. Well, did you ever get a fund together, since February, the A.M.C., to which members, your member stores, contributed equally?

Examiner Averill: What year, please?

Mr. Weisman: I beg your pardon?

Examiner Averill: What year?

Mr. Weisman: In this year, since February, 1936.

Examiner Averill: 1936?

Mr. Weisman: Yes.

Mr. Haycraft: I object to that, Mr. Examiner; not proper cross-examination; irrelevant and immaterial. I carried the direct examination down to the time of the red carding and no further.

Mr. Weisman: Oh, yes, you did.

11138

Examiner Averill: I have no objection to him going a little farther. Go ahead. We will see what this was. The objection is overruled; exception noted.

The Witness: Read the question.

Q. (Last question read.) A. No, we never got a find together. I do not mean to convey by that that we did not finance the manufacturers, but we never got a fund to gether, or anything like that.

By Mr. Weisman.

- 11141 Q. Let me ask you this question: From your knowledge of the workings of the executive committee, is Mr. Tily, of Strawbridge & Clothier, a member of the executive committee? A. Would you let me look and see.
 - Q. Certainly, by all means. A. I think I can find it.

 (The witness refers to papers.)

 The Witness: What is the question?
 - Q. (Question read.) A. Yes, he is.

Room 901, 45 Broadway, New York, N. Y., November 25, 1936.

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: EDWARD M. AVERILL, Examiner.

(SAME APPEARANCES:)

PROCEEDINGS.

Examiner Averill: All right, gentlemen, you may proceed.

11144

H. O. BERGDAHL resumed the stand and testified further as follows:

Cross-examination by Mr. Weisman (continued).

Q. Mr. Bergdahl- A. Yes, sir.

Mr. Weisman: Off the record. Please do not take this.

(There was a discussion off the record.)

By Mr. Weisman.

Q. You remember at the adjournment yesterday I asked you, in words or substance, whether or not if Mr. Tily of Strawbridge & Clothier had, in these proceedings, testified that the members of the A.M.C. had gotten together to subsidize manufacturers, whether you agreed with that and I told you that I would seek, over the adjournment, to

find in his testimony where he s stated? Do you recall that? A. I recall in substance that.

Q. Yes. A. I do not-

Q. Now— A. I do not recall saying that I agreed that there was a subsidy.

Q. No, I did not say that you did say that. A. Oh, I am sorry.

Q. As a matter of fact, I asked you whether you differed from that. A. Yes.

Q. Mr. Tily, who is president, is he not, of Strawbridge & Clothier— A. Yes, sir.

Q.—and which firm of Strawbridge & Clothier is a member of your A.M.C., one of your member stores— A Yes.

Q.—made this statement in the record at page 1764: "We"—speaking of Strawbridge & Clothier—"have been obliged already to make effort from time to time to develop our own resources by subsidizing, by giving them funds interesting ourselves, indirectly; making loans to them so that they can supply us with these goods * * *." Now, did the A.M.C. do that? A. We made loans.

Q. Mr. Tily also testified as follows, referring to sed words of subsidize, or whatever it was—"A. Well, Straw bridge & Clothier in connection"——

Mr. Haycraft: What page?
Mr. Weisman: Page 1861——

11148

Q. "A. Well, Strawbridge & Clothier in connection with the A.M.C. are doing it." Did Strawbridge & Clothier, in connection with the A.M.C., do it?

Mr. Haycraft: Do what?

Mr. Weisman: "What"—give money to manufarturers, or subsidize them, or, as you say, lend it them.

A. Well, the A.M.C. handled the transactions for the stores.

By Mr. Weisman.

Q. And the way the A.M.C. handled the transaction was that the A.M.C. called these stores together, or the store executives, and got together the sum of \$50,000; is that correct? A. No, they did not.

Q. Well— A. They did not get together, but they said we could use that amount of money. It was not gotten together, because, after all, we have the money.

Q. Then, I read you this question as entered at page 1862 of this record: "Q. In other words, I"—meaning Mr. Weisman—"am then to understand that the A.M.C., acting on your behalf"—meaning Strawbridge & Clothier—"and acting on behalf of other stores who are members of the A.M.C., have advanced to manufacturers of ladies' dresses the sum of \$50,000? A. That is my recollection of the total, I am not sure that that is the exact amount." Now, do you say—do you say that \$50,000 was not the exact amount?

Mr. Martin: Objected to. Mr. Haycraft: Objected to. Examiner Averill: Sustained. Mr. Weisman: Exception.

By Mr. Weisman.

11151 .

Q. Will you tell us to whom this money was advanced?

Mr. Haycraft: Objected to.

Mr. Martin: I object.

Examiner Averill: Sustained; I am not going into that line.

Mr. Weisman: Exception. Examiner Averill: Yes.

Herbert L. Bergdahl-For Commission-Cross.

Mr. Weisman: I will not argue it any further. Examiner Averill: Thank you.

By Mr. Weisman.

Q. With regard to this money that you state was advanced to various dress manufacturers, was any note taken as evidence of the advance?

Mr. Haycraft: Same objection.:
Examiner Averill: Sustained.
Mr. Weisman: Exception.
Examiner Averill: Exception noted.

11153 By Mr. Weisman.

Q. What evidence of the advance did you take from the —did the A.M.C. receive from the borrower?

Mr. Haycraft: Objected to, and I object to any further examination along this line, Mr. Examiner. Examiner Averill: Objection sustained.

Mr. Weisman: Exception.

Examiner Averill: Objection sustained to any examination along this line.

Mr. Weisman: Exception..

Examiner Averill: Exception noted.

By Mr. Weisman.

11154

Q. Now, Mr. Bergdahl, will you tell us what is the correct name of the organization you have referred to as the A.B.O.?

Mr. Martin: Objected to, he has already stated that.

A. Association of Buying Officers.

Examiner Averill: Offices, is it not?

The Witness: Offices, yes.

Examiner Averill: Yes, offices.

The Witness: Yes.

By Mr. Weisman.

Q. Is the A.M.C. a member of that association? A. No.

Q. Are you a member of that association? A. No, I am not a member of the association.

Q. What is that A.B.O. made up of? A. I testified to that; if you want me to repeat it, I shall do so.

Q. What is the A.B.O. made up of? A. It is an organization of between twenty-five and thirty of what I consider the leading resident offices in this city, leading and representative resident offices in this city.

Q. When you say "leading resident offices in this city," you mean resident buying offices? A. Yes, sir.

Q. And this association, is it an association made up of the executives of these resident buying offices? A. Yes.

Q. And the purpose is for the clearance of ideas? A: The purpose is for the discussion of problems pertaining to that particular branch of the industry.

Q. Where are the offices of the A.B.O.? A. They have no offices, as I recall it.

Q. Well, where do they meet? A. They generally meet at the—in Gimbel Brothers Restaurant, or at the Pennsylvania Hotel, or they may have meetings at any one of the resident offices. I recall—I recall that they have had a meeting at Cavendish Trading.

Q. Was Mr. John Block, of Kirby, Block & Fischer, connected with that association? A. Yes, sir.

Q. And what was his connection in the year 1935? A. He was president.

Q. When was that association formed? A. I believe it was the fall of 1938; August, or thereabouts.

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Herbert L. Bergdahl-For Commission-Cross.

- Q. Is that a dues paying organization?. A. They contribute toward expenses.
- Q. How? A. By paying—paying toward the expenses. I don't—I don't know exactly how they do it,
- Q. Well, did the A.M.C. at any time contribute to their expenses? A. I think they have.
 - Q. And when? A. I could not tell you; I do not know.
- Q. How recently, do you know? Have you any idea on the subject? A. No, sir; I could not tell you.
- Q. Have you any idea how much? A. Well, I think they have contributed around a hundred dollars.
- Q. And that is the limit of their contribution? A. That

11159 is all that I know of.
Q. When the F.O.G.A. was first organized, or prior to

- its organization, before any organization was made, Mr. Rentner, I understand, discussed and disclosed his purposes and his plans as they then were in connection with this association, to you? A. Yes, sir.
- Q. And at that time he told you, in words or in substance, did he not, that he believed that the piracy of style was injurious to the retailer and public, as well as to the manufacturer, did he not? A. I recall he made such state ments.
- Q. And he presented for your consideration a proposed plan or an idea, which ultimately found its way into the formation of the Fashion Originators Guild; is that not so? A. Yes, sir.

- Q. And at that time you either, acting on your own be half or acting on behalf of the A.M.C.—no, I will with draw that question. And then you had a discussion with Mr. Rentner about this matter, did you not? A. Yes, sir.
- Q. After you had this discussion—. A. I should say many discussions, I think.
 - Q. Well, you had the first one, at all events. A. Yes.
- Q. Did you then take it up with your superjors? A. Yes, I did.

- Q. And did you present to them Mr. Rentner's thoughts? A. I am not sure that I can say I did exactly present Mr. Rentner's thoughts.
- Q. Well, I do not mean exactly; I mean, did you convey to them the subject matter of the conference between Mr. Rentner and such other men as were present, and yourself? A. That is right.
- Q. And after you had presented these thoughts to the yarious officials, or the executive committee of the A.M.C., or your superior, Mr. Reilly, you then had further discussions with Mr. Rentner? A: Yes, sir.
- Q. In these discussions with Mr. Rentner, Mr. Rentner was seeking to get your ideas, and the ideas of your association, on this subject, as a whole, was he not? A. I thought he was.
- Q. Well, I mean, did he not—I mean, do you not still think he was, at that time? A. Well, subsequent events have led me to believe that he just did not care about my thoughts.
- Q. I see. A. But I mean, I thought at that time—Q. Yes, I mean—A.—that he definitely was interested.
- Q. I see. And as a result of these thoughts that were expressed and exchanged between Rentner and yourself, you gave Rentner to understand, did you not, or such other men who came with Rentner—there were Bass, I understood you to say, or Sondheim, and some others—that the plan of protection against style piracy was a laudable one? A. In what year?
- Q. In 1932, or the latter part of 1932, or the latter part —or the early part of 1933, you have told us that these discussions consumed some time. A. Well, in 1933, I recall that we—I recall that I conveyed my impressions to Mr. Rentner, and that I was sympathetic to this thing.
- Q. Well, you were a little more than sympathetic, were you not? A. Yes, I would say that I was at that time.

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Herbert L. Bergdahl-For Commission-Cross.

Q. Yes, A. I was.

Q. As a matter of fact, at that time, were you not, to some degree, enthusiastic about this plans. A. Well, I would not say just exactly enthusiastic, but I—

Q. Would you say you thought well of the plan? A Yes, I was definitely sympathetic with what they were trying to do.

Q. And, of course, you were sympathetic—when you were sympathetic, you were at that time engaged in furthering the interest of the retailer in this market, were you not? A. Well, I do not understand that question.

Q. Well, I mean that you understood you were being paid, and that it was one of your duties, in this market to do that which would best serve the interest of the retailer; is that not so? A. I was being paid to work for the A.M.C.

Q. Yes, and you were loyal to your job and to your duties, were you not? A. Yes.

Q. And your duties were to do those things which would further the interest of the retailer? A. Well, if you will explain what you have reference to, I will—I will answer that; but that is a big question there. I know that my superiors at times differed with me, very much so, on this program—

Q. Do you fail to understand that question? A. I was working for the A.M.C. at the time; I was working for them; I was serving them in this market.

Q. Yes. A. That was my job to take care of service for them in this market.

Q. Yes. A. I have explained that in my testimony.

Q. Are you afraid to tell it to me? A. No, sir; I will tell it to you as many times as you want.

Q. All right, then. Was it not your job at that time to further those interests of the retailer as they appeared to you in connection with this ready-to-wear market? A. I am—I don't know the point of it.

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- Q. I do not care whether you know the point of it or not. A. I was here to work for the A.M.C. Stores. That is what I was doing every day, all the time.
- Q. Did you not yourself say to Mr. Haycraft in answer to his question to you, that it was your job to serve the best interests of the retailer in this market? A. No.
- Q. That that was your duty? A. No, no, no, that I did not say—if you will read what I said—
 - Q. Well, what- A. -it is different from that.
- Q. What do you think you said? A. I said we—I said the A.M.C. serves its member stores in any way that they want, within the broad policies of the organization.
 - Q. All right. A. Of the corporation.
- Q. In 1932, when you had these discussions with Mr. Rentner, you told him—and others— A. Yes.
- Q.—you told him, did you not, in words or substance, that in your opinion the retailers throughout the country would be in favor of this proposed—of a proposed plan, such as he in substance disclosed to you at that time; for the curbing of style piracy; is that not so? A. In 1932, I don't think I expressed myself as in favor of any plan to curb style piracy; I don't recall that I did.
- Q. Did you not— A. I have previously stated that I was in sympathy, and said so at a meeting in 1932, with the plan to improve, or to—to improve the conditions of better dresses, as described by Mr. Rentner, and at that time he certainly did not describe anything about the plan in detail, or red carding, or anything else. I mean that.
- Q. Well, that is not what I asked you. I am going to ask you this question again— A. Go ahead.
- Q.—in another form to see whether I can make you understand it. In or about the time that the Guild was formed— A. Yes, sir; 1932.
 - Q. Yes . -or shortly before it was formed- A. Yes.

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Herbert L. Bergdahl-For Commission-Cross.

Q.—did you state to Mr. Rentner, in words or substance, that it was your opinion that the retailers throughout the country would be generally in favor of the platto curb style piracy?

Mr. Haycraft: I object; he did not say that in

Mr. Weisman: I am asking him whether or no he did.

A. I do not recall that I ever did, Mr. Weisman.

By Mr. Weisman.

Q. Well, if you said it, was it correct and true?

Mr. Haycraft: He did not say that.

Mr. Weisman: Oh, you cannot pull that stuff. Examiner Averill: Answer the question, if you

A. I do not recall that I said it. If you will read it to me I will answer your question, if I ever said that; I won' deny I said it, I will tell you that, if I said it.

By Mr. Weisman.

Q. Well, if you said it was it true?

Mr. Haycraft: I object; he did not say that. Mr. Weisman: You only said it the other day.

Mr. Haycraft: I object.

A. I just got through telling you I did not say it the other day.

By Mr. Weisman.

Q. Well, what do you think you said the other day?

Mr. Haycraft: He did not say it.

By Mr. Weisman.

Q. Mr. Bergdahl, do you now deny that when you were testifying on your direct examination, that you testified, in words or substances, that Mr. Rentner asked you how you thought the retailers of the country would react to such plan as he disclosed to you? A. I recall testifying that Mr. Rentner—that I said Mr. Rentner asked me, and I recall testifying that I told him—

Q. You told him, did you not A. -my opinion.

Q.—that in your opinion, such retailers—that the restailers would react favorably, did you not? A. I told him that I thought the retailers would react favorably to the plan he outlined at the luncheon meeting.

Q. Well, that is what I am asking. A. That is right.

Q. Then why do you not say yes? A. No, that is not what you have asked me; you have not asked me that at any time.

Q: The record will clearly show. A. I have asked you to read what I have said, and put it on the record, if you want it there; I won't deny anything that

Q. I want to see what kind of miserable memory youmay or may not have; see?

Mr. Haycraft: I object.
The Witness: Go ahead.
Examiner Averill: Do not answer.

By Mr. Weisman.

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Q. In any event, you now state that you told him that you believed it was your opinion that the retailers of the country would react favorably to such a plan as he then presented to you? A. I don't recall that I answered—I don't recall that I said other retailers; I recall that I gave my opinion that—and that I liked the plan; but if I included other retailers, then I will stand by it.

Herbert L. Bergdahl-For Commission-Cross.

Q. No, I do not care what you will stand by. I want to find out what is the truth. A. You read it to me and I will tell you.

Q. You have just stated that you now remember, that without stating whether you failed to recollect anything else, but that there is one thing that you do remember, to wit, that you told him you were in favor of the plan at some time, you told him that, did you not?

By Examiner Averill.

Q. If you can, I would appreciate it very much. A. I understand the time to be-

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Q. Exactly. A.—before or immediately after the Guild was formed. I think he prefaced his question with that.

Q. All right. A. And I have stated in words or substance to the effect that I was at that first meeting, at which this was discussed, and that I said that I—that I thought that we, myself, and—I probably mentioned fetailers, but I cannot say exactly, were in favor—or would be in favor of the plan that Mr. Rentner outlined at that time, to foster better merchandise, through publicity, and a label, and things like that, as he outlined at that meeting

Q. All right.

that day.

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By Mr. Weisman.

Q. Did Mr. Rentner at that day which you refer to—and what is your recollection of the time that that day was? A. I should say it was in the first quarter of 1933; which day, I couldn't tell you.

Q. No. All right. Now, we have got the time.

Mr. Haycraft: 1933 or 1932?

The Witness: 1932, I am sorry, 1932.

By Mr. Weisman.

Q. Now we have got the time fixed in the first quarter of 1932, that Mr. Rentner came to you, or sent for you, or had a meeting with you, and others, and disclosed to you this plan that you just immediately talked about. A. Yes, sir.

Q. You have also testified that Rentner disclosed to you at that time that this plan was to be directed to the curbing of style piracy; is that not a fact? A. I don't recall that I ever said that.

Q. Well, if you do not recall it, do you now recall it?
A. No.

Q. In other words, it is your statement now that when Rentner first discussed this with you, there wasn't any talk by him with relation to the curbing of style piracy? A. There may have been.

Q. Well, what is your recollection of it? A. I said I don't recall any such substance, or words, at that meeting.

Q. All right. Now, subsequently, and after this meeting in the early quarter of 1932, you learned, did you not, at some time, that it was part of this plan to curb or ameliorate the conditions which had grown up by reason of style piracy? A. Yes, sir.

Q. When did you first find that out? A. I would say in 1932.

Q. Well, what part of 1932, or our friend, Mr. Haycraft, will object. A. Oh, I cannot say exactly, Mr. Weisman: it is—

Q. Well, what is your best recollection? A. You want me to recollect something that I don't recollect—it was 1932—I was told at that time that that was the plan, whether it was March, April, May, or June, or September, or October, I cannot say—

Q. All right. A. -definitely. . . .

Q. That is all right. I mean, I understand your situation, but my friend on the other side does not. 11180

Herbert L. Bergdahl-For Commission-Cross.

Mr. Haycraft: Do not worry about me. I will take care of myself, perfectly capable of it.

By Mr. Weisman.

Q. After this first meeting, you had numerous meetings with Mr. Rentner, did you not, and his associates? A. Yes, we had quite a few meetings.

Q. Then ultimately you did state to Mr. Rentner, in words or in substance, that you were in favor of such plan, one of the elements of which plan you understood to be the curbing of style piracy; did you not? A. Yes, I would say so

11183 Q. Now, when, would you say, that was done? When the—as we were told by Mr. Rentner—

Q. Yes. A. —what his plans were—

Q. Yes. A.—we reacted to them.
Q. Yes. A. And I should say it was 19—let us see, now—the latter part of 1932 and early 1933, that his plans took more shape than they had been in previously.

Q. Yes, that is right. So that we have in the early part—in the latter part of 1932, or the early part of 1933, a sort of crystallization of thought on the part of Rentner,

and you, is that right took form? A. Yes.

Q. It is another way of saying. And during this time, from the first quarter of 1932 to the early part of 1933, had you discussed this matter which Rentner, and his

associates, had disclosed to you, with your retailers?
Why, I think we had, yes.

Q. Well, your A.M.C., and you, yourself, were acting in more or less of a representative capacity, were you not? A. Yes.

Q. And it was the usual and customary thing for you to ascertain the wishes and desires of your principals?

A. Yes.

Q. And those principals were the retailers? A. They were the A.M.C. stores.

- Q. Yes. Well, the A.M.C. stores are retail stores? A. Yes.
- Q: So, then, would you say, in words or substance, that in 1933 when you advised that you were in favor of the plan as it was then disclosed—mind you, not as you claim it was ultimately developed—but as it was then disclosed, you were in favor of it—that by that the natural and reasonable implication was that the stores you represented were generally in favor of it? A. I did not state it to them in that way.
- Q Well— A. Will you let me answer it? A. Wait a moment, just a moment, and I will try to refresh your recollection.
- Q. —that you advised them the retailers would react a favorably? A. When?
- Q. I want to know if you did advise them? A. Mr. Weisman, I have testified about four years' contacts with the Guild. If you will name the place and time when I testified I will say whether or not I did.
- Q. All right. Now, I thought your mind was directed to the early part of 1933. A. As many conferences—
- Q. Now, at these many conferences, did you state to Mr. Bentner, or his associates, or whoever was present on his behalf, or their behalf, that you believed the retailers would react favorably to the plan that had then been disclosed to you? A. No.
 - Q. You never told them prior A. I don't
- Q. —prior to 1933. A. I don't recall—I said prior; but
 - Q. Did you prior to 1933? A. I have told you that I did to the
 - Q. When? A. I have told you.
 - Q. When? A. To the plan that Mr. Renther outlined at the first luncheon meeting.
 - Q. Well- A. I told you to that plan-
 - Q. Yes. A. -I said we would react favorably.

Herbert L. Bergdahl-For Commission-Cross.

- Q. Now, that was in the early part of 1932. A. That is right.
- Q. Then I asked you, you went along and had further conferences with Rentner. A. And the plan developed—
- Q. And the plan developed. A. -took shape.
- Q. Now, when it took shape, it took shape in conference with you? A. No, not always.
 - Q. Well, was the shape not disclosed to you? A. Yes.
 - Q. And you A. After the shape was formed.
- Q. And you knew it prior to 1933? A. I told you in my direct testimony—
- 11189
- Q. Oh, no, no, no A. -and I-
- Q. Now-

Mr. Weisman: May we have an answer to that question?

Examiner Averill: Well, now-

The Witness: I knew what prior to 1933?

Mr. Weisman: What?

The Witness: Make it specific.

Examiner Averill: Read the question.

(Last question read.)

Examiner Averill: What is your answer?

The Witness: What prior to 1933? What did I know? Say it.

11190 By Mr. Weisman.

- Q. You knew the shape that the plan had taken? A. Well, yes, I knew of—I think I knew part of the shape it had taken. They were forming local retail guilds.
 - Q. Oh, look A. That is what I said.
- Q. I am asking you a very simple question. Didn't you and Mr. Rentner, and the rest of these people, have a great many conferences wherein Mr. Rentner disclosed to you the terms of this plan prior to 1933? A. No, no; in my direct testimony I did not say that.

- Q. You did not say what?-- A. L said-
- Q. —What you said on your direct testimony, because I did not believe you then, and I want to know what you said.

Mr. Haycraft: I move to strike that question. Examiner Averill: It is stricken, gentlemen. Mr. Weisman: All right.

·By Mr. Weisman.

Q. I want to know what you now say: Do you now say that prior to 1933 Rentner, or his associates, did not disclose to you that one of the—if not the main point of the plan—was that they were seeking to curb style piracy, or to ameliorate the conditions which existed as a result thereof? A. You mean you want me to answer "yes" or "no" to that?

Q. Yes; that is right. A. I won't do it.

- Q. All right. You mean when you say "You won't" that you cannot? A. That's right, can't, shouldn't, wouldn't.
- Q. Well, if you cannot, I am not interested in anything further. You are certain that you cannot answer that "yes" or "no"? A. That is right.
- Q. That is all I want to know from you on that score. Now, in 1933—did not Rentner, shortly prior to 1933; in a conference with you, or in numerous conferences with you, seek to give you ideas generally about this plan—A. Not—
- Q. —to curb style piracy. A. Not prior to 1933. Now during 1933 he did.
- Q. Well, now, when in 1933 did he first seek to obtain your ideas, would you say? A. Oh, in January or February.
 - Q. In January or February? A. Yes.

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Q. Then, did he disclose to you, in words or in substance, that one of the purposes of this plan was to curb style piracy? A. Well, he wanted to hire me at the time, and we discussed all kinds of things, and he wanted my ideas about how to run the Guild, and inasmuch as he wanted his own—he wanted to employ me at the time, and he was very anxious to have my ideas—he was not at the time exactly conveying his, but he wanted me to state what my thoughts about the Guild were.

Q. Oh, that is not the question that I asked you. A.

Q. You had certain conferences with Mr. Rentner in the early part of 1933, and when I say "Rentner," I mean Rentner and/or his associates, whom you have heretofore described. A. Yes, we had these conferences.

Q. All right. A. Primarily around May and June, primarily, but—

Q. May and June of when? A. 1933.

Q. All right. A. But we had conferences and conversations that were personal and otherwise. I have tried to avoid bringing them in here. You know that I have. In never mentioned them.

Q: I am not a mind reader.

Mr. Haycraft: Oh, I thought you were.

A. If you would like me to explain-

Examiner Averill: Ope moment, please; please, now, not for the record.

(There was a discussion off the record.)

By Mr. Weisman.

Q. Now, I asked you a question about conferences, and you said you had many conferences.

Examiner Averill: Yes.

By Mr. Weisman.

- Q. You remember saying that a moment ago? A. Um-huh.
 - Q. If you shake your head- A. Yes.

Examiner Averill: He said "yes," at least I.

Mr. Weisman: I did not know whether the re-

The Reporter: He said "Um-huh."

By Mr. Weisman.

Q. At any of these conferences which you have mentioned, as being in May or June, 1933, was it disclosed to you, or did you know that the purpose of the Fashion Originators Guild was to ameliorate or curb style piracy?

A. To curb style piracy?

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- Q. Yes. A. Yes, sir.
- Q. When did you first find that out? A. Now-

Examiner Averill? What?

Mr. Weisman: That it was the purpose of the Guild to curb style piracy.

- A. I think I have made an explanation, and that-
- Q. I want to know what you found out. A. That I found out in 1932, I mentioned it a little ago, in 1932.
- Q. In other words, we now have you stating that in 1932 you found out that it was the purpose of the Fashion Originators Guild to curb style piracy? A. I so said a little while ago.
- Q. I do not care what you said a little while ago. I want to know if you now state? A. Yes.
- Q. Please tell us, as nearly as you can, when you found that out. A. Do you want me to state that again?

Examiner Averill: If you can, tell us.

The Witness: A little while ago I said—— Examiner Averill: Do not say what you said a little while ago.

The Witness: I will repeat what I said. I don't know whether it was May, June, July, August or September, it was in those months of 1932 that I found out they were going to go after style piracy.

By Mr. Weisman.

either May, June, July, August or September of 1932, you do not know which month any better han that, did you communicate to your store principals that that was the purpose of the one of the purposes of the Fashion Originators Guild? A. I do not recall whether I did or not. I have looked to see if I did, and I cannot find that I have,

Q. Now, when you found it out, and you say it was in

I cannot find any record of such correspondence.

Q. Well, when you found it out, did you tell Rentner, or his associates, that you were in favor of such a program or purpose? A. As then outlined, I think I did.

Q. That is all right. Now, did you tell Mr. Rentner also, when you found that out, that you believed your store principals would be in favor of such a program? A: I don't think that I said that, but I think I said that I was

Q. In other words, your best recollection is that when you gave approval to such a program you gave it personally and not on behalf of the people you represented?

Mr. Haycraft: I object to the use of the word "approval" in that question.

Mr. Weisman: I said such approval as he testified to.

Mr. Haycraft: He did not say he did approve, that is my objection.

Examiner Averill: Read the question. (The last question was read.)

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Examiner Averill: I see no objection to that question; the objection is overruled.

A. I cannot answer it "yes" or "no."

Q. All right.

Examiner Averill: 'Then do not attempt to.

By Mr. Weisman.

Q. Let me ask you this: When you discussed this program with Rentner, during this period from May to September of 1932— A. Yes, sir.

Q.—were you of the opinion that Rentner was seeking your personal reaction to this plan which he discussed with you, or that he sought your personal reaction and the reaction of the retail stores you represented? A. I think he was seeking my personal reaction based on my knowledge of—of our retail temperament, especially as it applied to our stores.

Q. I see. And at that time he did not seek to find out from you directly or indirectly how your stores, which you represented, would react to this plan? A. No.

Q. Did you, before you gave Rentner your personal ideas during that period, May to September, 1932, ascertain in any fashion what were the opinions of your store principals toward such a plan? A. No.

Q. Well, did you not testify on your direct examination that before you gave Rentner your opinion, you wrote out to the stores to get their ideas? A. No, not—if you will specify when——

Q. No, no. A. I said at times I wrote, and at times I did not.

Q. All right, the record will speak for itself.

Examiner Averill: Yes.

11204

By Mr. Weisman.

Q. Do you know whether or not Rentner or the Guildby the way, I will withdraw that question... By the way, do you know when the Guild was organized? A./I think it was January or February, 1932.

Q. So that all the conversations that you had with Mr. Rentner were all subsequent to the organization of the F.O.G.A.? A Apparently.

Q. Well, actually, were they not? A. Actually.

Q. During this time you knew, did you not, that the F.O.G.A. was constantly-I will withdraw that-was profusely writing out to retailers to get their opinions upon 11207 the matter of the advisability of curbing style piracy?

> Mr. Haycraft: I object to the question unless the time is specified.

> Examiner Averill: He says during that period, that is the same period he is speaking of.

Mr. Haycraft: You mean May until August? Mr. Weisman:

Examiner Averill:

Yes, 1933. Mr. Hayeraft: 1932.

Examiner Averill: 1932, I meant to say.

Mr. Weisman: 1932.

The Witness: Read the question.

Q. (The last question was read.) A. I knew that they 11208 were writing, but not to get opinions.

By Mr. Weisman.

Q. Well, were they writing to urge upon retailers the advantages as they, the Guild, believed them to be? Yes.

Q. In this program? A. Yes, sir.

Q. And these letters came to you from your retailers? A. On occasions, yes,

- Q. And you saw them? A. Yes.
- Q. And you discussed them? A. Some of them.
- Q. Naturally— A. Yes, sir.
- Q. —you saw the ones that were brought to your attention? A. That is right.
- Q. And there were a large number of them brought to your attention? A. Yes.
- Q. And in these letters the Guild, among other things, did they not, sought to make it plain to the retailer that the curbing of style piracy was of a benefit to the retailer? A: Yes.
- Q. And at that time, that is, we are still in 1932, you agreed with that idea to the extent that it had been disclosed to you? A. Did you say 1932?
- Q. Yes. A. The letters that came to my attention were mostly from December on.
- Q. All right. A. December, 1932 on, and there were not many in early 1932, or since 1932, I mean, as I recall it.
 - Q. Well, the date is not important. A. All right.
- Q. If it is 1932, or the early—you say it is December, 1932? A. They began.
- Q. The date is unimportant. I just want to find out, and if you are mistaken I promise to make no point of it. A. All right.
- O. Now, you saw these letters? A. I saw some of them,
- Q. And you even produced one of them here? A. Yes, sir.
- Q. And the one that you produced was brought to you, or sent to you, by the retailer to whom the Guild had sent it? A. Yes, sir.'
- Q. Now, you have produced Commission's Exhibit 861 in evidence; you got that from Mr. Forman? A. I think 80.
- Q. And who is Mr. Forman? A. He is the owner of B. Forman & Company of Rochester, New York.

- Q. And that is one of your member stores? A. That is right.
- Q. And when Mr. Forman got this letter, he brought it in to you? A. Yes, sir, as I recall it.
- Q. And he brought it in around the time he received it, or shortly thereafter? A. As I recall it, approximately.
- Q. Yes, the letter was marked received by them, December 8, 1932, and so then he brought it in, let us say, within a period of thirty days thereafter; is that fair? A. As I recall it; yes, sir.
- Q. And when Mr. Forman showed you this communication, you then learned what was therein? A. Yes, sir.
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- Q. And you saw many other such communications of similar nature and character? A. At that time.
 - Q. Yes. A. Yes, sir.
- Q. And did that not give you any idea of what the Guild program was? A. Yes, sir.
- Q. And reading from this exhibit I notice it says as follows: "What the Guild is trying to accomplish is that there should be no copies bought by any legitimate store in the United States regardless of what price store it might be." Did you see that in the letter? A. Yes, sir.
- Q. Well, did you not, when you saw this written in the letter to Forman, and in other letters, believe that that was one of the purposes of the Guild? A. Yes, sir.
- Q. So that in December of 1933, or in the early part

Mr. Haycraft: 1932.

By Mr. Weisman.

Q. December of 193°, or in the early part of 1933, you, and certainly some of your stores, knew that it was the purpose of the Guild that no copies should be bought by any legitimate store in the United States regardless of what the price might be? A. Yes, sir.

- Q. Now, subsequently to the receipt by the Forman store of that letter, from the representative of the Guild, the Forman store agreed—or I will withdraw that—signed a declaration of co-operation; is that not so? A. Six months later, I believe.
- Q. Yes, and since you say six months later, I assume that you saw the declaration. A. I—yes—I have seen a copy of their declaration.
- Q. Yes. A. I do not recall that I ever saw their declaration, Mr. Weisman.
- Q. Yes. Have you got a copy of it? A. I haven't it with me.
- Q. In any event, there can be no doubt in your mind, can there, that the Forman Declaration, or the letter, a copy of which you saw, was sent in by Forman subsequently to the receipt by them of Commission's Exhibit 861? A. And subsequent to my—
- Q. Well, never mind any more. I just want to make sure. A. It was subsequent.
- Q. Yes. A. Yeso
- Q. And it was also sent in subsequent to their showing to you the letter, Commission's Exhibit 861? A. And my talking to them about it.
 - Q. And your talking to them? A. Yes.
- Q. Yes. And I show you this letter dated December 29,

Mr. Weisman: First, may I mark this for identification.

(A paper was thereupon marked for identification Respondents' Exhibit 86.)

Examiner Averill: Respondents' Exhibit 86, all : right, sir.

By Mr. Weisman. o

Q. I show you Respondents' Exhibit 86 for Identification and ask you whether or not this is the original of the copy of the letter which you saw and which you referred to as a copy of the declaration of co-operation (handing paper to witness)? A. That is not the one to which I had reference a moment ago.

Q. Did you ever see a copy of Respondents' Exhibit

Mr. Haycraft: -for identification.

Mr. Weisman: For identification, thank you, Mr. Haycraft.

Examiner Averill: That is that letter he just showed you.

Mr. Weisman: Yes.

Examiner Averill: Did you ever see a copy of it. that one?

The Witness: I was apprised of its contents, but never saw a copy.

By Mr. Weisman.

Q. You say you were apprised of its contents? A. Yes.

Q. Who apprised you of its contents? A. One of the Formans, either Eddie Forman, or his father, B. Forman.

Q. So that you knew, did you not, that after the receipt by the B. Forman Company of Commission's Exhibit 861 and after they had spoken to you, they had sent to the Guild a letter, the substance of which letter they told you about and which you now say is fully contained in Respondents' Exhibit 86 for Identification?

Mr. Hayeraft: I object to the form of it, also. Examiner Averill: The objection is overruled. I see no objection to the form. The witness can answer that readily.

11219

A. The substance came—I wish I could, your Honor—I am probably very dumb about this proceeding—

Examiner Averill: No.

The Witness: —and I am sorry, if that is the case. The substance of this, forming a local guild, was told to me, and that they had made that decision up there—

Examiner Averill: Then you were asked whether the letter which has now been shown to you, Respondents' Exhibit 86 for Identification, covers the matters which were told to you.

The Witness: It does.

Examiner Averill: That is all.

The Witness: That is right.

Examiner Averill: That is all you were asked.

Mr. Weisman: I now offer this letter in evidence, Respondents' Exhibit 86.

Examiner Averill: Show it to our friend.

(Mr. Weisman hands Respondents' Exhibit 86 for Identification to Mr. Haycraft.)

By Mr Haycraft.

Q. Do you recognize Mr. Forman's signature on this letter, Mr. Bergdahl?

Examiner Averill: Show it to him.

By Mr. Haycraft.

Q. I show it to you (handing paper to ditness). A. I cannot say that I recognize it as Mr. Forman's signature, no.

. Q. Well, from looking at this letter, and the context of it, do you have any doubt as to whether or not that is the original letter from Mr. Forman to the Guild? A. No, I don't.

11000

AFTERNOON SESSION-2 P. M.

H. O. BERGDAHL resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Haycraft.

The Witness: I would like to make a statement, if your Honor please, because I want to make a correction in something I said this morning.

Examiner Averill: You may proceed.

The Witness: Well, I should like to make the correction in this regard, that I think I testified, if not in these words, in substance that it was my inderstanding that I had seen a copy of a declaration signed by R. Forman & Company subsequent to this contract, or this agreement, which was shown to me.

I have referred to my files in my office, or had my secretary do so, and find that in the mail or correspondence that Mr. Post sent me in the fall of last year, 1935, that he made the statement that R. Forman & Company, and one other store, were registered under the agreement, of a local agreement, of Rochester local guild. He did not say whether they subsequently signed the contract or not, and therefore while I was under the impression that they had, they apparently had not.

Examiner Averill: Is that all that you want to say in that regard?

The Witness: Yes, sir: Examiner Averill: Proceed.

By Mr. Weisman.

Q. So that this Respondents' Exhibit No. 86 would be, to your knowledge, the only declaration that Forman & Company had actually signed? A. As far as 1 know.

11225

- Q. As far as you know? A. As far as I know.
- Q. During this period, from the first quarter in 1932 until the early part of 1933, the Guild had sent out, had it not, numerous letters and/or bulletins and/or communications, call them whatever you will, to the various retailers advising them of the purposes of the Guild; you do know that, do you not? A. I became familiar with such policies at the end of 1932; yes, sir.
 - Q. You saw them? A. I saw them.
- Q. Then you became familiar with the physical bulletins, did you not? A. I would be willing to say that; yes, sir. I did become familiar with such bulletins at or about the end of 1932.
- Q. These bulletins, did they not set forth in general, and in lay language, the aims and/or purposes and/or intentions of the Guild, or purported so to do; is that so? A. As they developed.
- Q. Yes. A. Yes.
- Q. And when your member stores would receive these bulletins from time to time, or these letters, or these communications, or whatever you called them, they would send some of them, at least, on to you, or discuss them with you, or discuss the contents of them with you, the contents thereof with you; would they not? A. They would.
- Q. These bulletins were sent to your member stores as well as to others? A. I think so.
- Q. Your member stores, in so far as you know, were treated the same at that time as anybody else? A. As far as I know.
- Q. I show you a copy of Commission's Exhibit 454, No. 454, a letter of December 16. A. Yes.
- Q. Disregarding the pencil notations on there, did you ever see that before—referring to Commission's Exhibit 454? A. Why, I cannot say—I do not recall that I saw it at the time, but I have seen this.

11228

Herbert L. Bergdahl-For Commission-Cross.

- Q. You have? A. Yes:
- Q. To the best of your recollection, what would you say— A. What is that?
- Q. It is dated, as you will notice, December 16, 1932, and did you see it at or about the time that it was sent out? I do not mean on that day, but I mean within sixty days or ten days or thirty days or so. A. I am not sure, but I will say that I think I saw it at that time. It certainly has come to my attention because I knew of it.
- Q. How did it come to your attention? A, I think it came to my attention by stores asking me what I thought about local guilds.
- 11231
- Q. When you saw this did you notice therein paragraph 3, which, referring to the Guild program, and stating to the retailer. "The point we wish to stress is that when the consumer sees in a legitimate dress shop a dress that appeals to her, she will have confidence that the price asked for this dress represents its true value, and she will either buy it at that price or if she prefers to spend less money than that price, she will select another style dress to suit her purposes, she will understand that by waiting a week or two longer she will not be able to purchase this dress or an inferior copy of the original of that, or similar to it at a fraction of the original." Do you
- 11232

told you.

Q. No, no, no. I asked you, do you notice that, and did you notice that at the time? A. Why, I have told you-

notice that-would you like to see it? . A. Why, I have

Q. Would you like to see it? A. No.

Examiner Averill; You can answer whether you noticed it or not.

The Witness: I cannot recollect, but I have told

By Mr. Weisman.

Q. Now, Mr. Bergdahl, I call your attention to it, and since I have called your attention to it, would you say that in or about December 16, 1932, that you knew from this communication to others, and/or from others, if not from this alone, or from others alone, that that was one of the substantial purposes of the Guild? A. Yes, I knew that that was one of the substantial purposes of the Guild.

Q. I call your attention to this matter contained in this communication which says—

Examiner Averill: Is that the same exhibit?

By Mr. Weisman.

11234

Q. Still referring to Commission's Exhibit No. 454: "We wish to record with all possible emphasis the fact that it is not the Guild's intention to interfere with or to impede in any way whatever the individual retailer's complete control over their business"-I beg your pardon-"complete control over every phase of the operation of his own business. We would not be a party to any compact that would be in reality, or might be construed as designed to regulate prices, or to hamper the free play of competition. All we can-we cannot consider any relationship with merchants which would deprive them of conducting . their enterprise in any ethical manner that they may see fit. Needless to say, the acceptance of the Guild proposals dees not limit the retailer's purchases to any group of resources. The only condition stipulated and upon which frank comment of merchants is invited is that they shall not buy copied or pirated merchandise on the principle that this plagiarism has been, definitely been proved to be detrimental to the best interests of the manufacturer, retailer and consumer." You say that at or about the date that it was sent out, did you not? A. I think so.

- Q. You knew then that in December, 1932, the only condition stipulated by the Guild was that they should not buy copies or pirated merchandise, did you not? A. I did not know that.
- Q. Did you not know that the Guild was urging the acceptance of this principle; that is, that merchants, retail merchants, should not buy pirated merchandise upon the ground that they believed—referring to the Guild, I mean—and said that they, the Guild, believed that the purchasing of pirated merchandise had proved to be detrimental to the best interests of the manufacturer, retailer and consumer? A. I recall such.
- 11237 °Q. You do recall such. Do you recall that such was the claim, plan and position of the Guild in 1932, as evidenced by Commission's Exhibit No. 454? A. I recall such.
 - Q. Mr. Bergdahl, you have testified that you saw certain notices in "Women's Wear Daily"; is that correct? A. When?

Examiner Averill & You testified that you saw notices. Say "Yes."

A. Yes, yes.

By Mr. Weisman.

- Q. The "Women's Wear Daily," was that a paper that was regularly read by you? A. Yes.
 - Q. Did you in 1932 read it regularly? A. Yes.
 - Q. While in or about 1932— A. What is that?
 - Q. I withdraw that question. A. O.K.
- Q. Did you not know that in or about the month of May, 1935, at a meeting attended by certain executive members of the A.M.C., or members of the A.M.C., in or about that time, requested—that is, these members of the A.M.C. in or about that time requested, either in words or in substance, that the Guild extend its program to and

take in the \$10.75 manufacturers? I refer to May, 1933—I said, erroneously, May, 1935 in my question. A. Do I know that members of the A.M.C. made such a request?

Q. Yes. A. No. No, I do not recall any such request.

Q. Let me ask you if up to May, 1933, the Guild-

Examiner Averill: 1933?

Mr. Weisman: Yes.

Examiner Averill: Your previous question was for 1935.

Mr. Weisman: Yes, but I corrected it to 1933. Examiner Averill: You corrected it to 1933?

Mr. Weisman: Yes, sir.

Examiner Averill: I just want to keep the record straight. Proceed.

11240

By Mr. Weisman.

Q. You understood my correction to 1933? A. Yes, sir.

Q. We have the formation of the Guild and we have your co-operation, in any event, up to May, 1933; that is correct, is it? A. Yes.

Q. When I say "your co-operation," you have testified that to be a period that is already in evidence that your member stores co-operated? A. Yes.

Q. Was that up to 1933, and particularly 1933, or, I will put it this way: That, in fact, up to 1933, in the month of May, your stores of the A.M.C. and the A.M.C. itself were co-operating with the F.O.G.A. in its program as it was being exercised; is that correct?

11241

Mr. Haycraft: I object to that. May, 1933, there had not been a single one signed up by then.

Mr. Weisman: All of these signed prior to that, every declaration of co-operation you have in evidence was signed prior to May, 1933.

Examiner Averill: There is nothing in the evidence to warrant that, obviously. Objection over-

Herbert L. Bergdahl-For Commission-Cross.

ruled. You may answer the question. There is nothing to warrant the objection so far.

A. No co-operation was required up to that time.

By Mr. Weisman.

Q. Then it is your statement that up to May, 1933, the stores were buying copies? A. I think so.

Q. That is your best regollection?

Examiner Averile: When you say "stores," what stores do you refer to, Mr. Weisman?

11243 By Mr. Weisman:

Q. The member stores of the A.M.C. A. I am quite sure that they were. They could not help it.

Q. Well, wait a minute. A. Yes.

Q. Do you know the terms of the declaration of co-operation, to wit, that the stores will not knowingly purchase a copy of dresses manufactured by members of the F.O.G.A.? A. Yes, sir.

Q. Do you know Mr. Ladd? A. George Ladd?

Q. Yes. A. Yes.

Q. Who is he? A. Merchandise manager of ready-towear for Abraham & Straus, Inc., over in Brooklyn.

Q. Is Abraham & Straus, Inc., a member of the A.M.C.? A. Yes, sir.

11244

Q. Do you know Mr. Walter Deiches? A. Yes, sir.

Q. Who is he? A. He was merchandise manager of Bloomingdale's at the time.

Q. New York? A. Right.

. Q. When you say "at the time," what year are you referring to? A. 1933.

Q. '33? 'A. Right.

Q. 1932 also? A. I think he was also in 1932, but I am not sure about that.

- Q. Was that store also a member of the A.M.C.? A. Yes, sir.
 - Q. Right? A. Right.
- Q. Do you know whether or not prior to 1933 Abraham & Straus had signed a declaration of co-operation? A. I do not.
- Q. Do you know whether or not they had expressed themselves as being in favor of the Guild policy to prevent the copying of styles and originations? A. To the Guild?
 - Q. Yes. A. I do not know.
- Q. Do you know whether or not Abraham & Straus, Inc., on November 1, 1932, said in words or in substance to the F.Q.G.A., and by that I mean the Fashion Originators Guild of America, Inc., that they, Abraham & Straus, wished to express themselves in sympathy with, or their sympathy with the efforts of the Guild to prevent the copying of styles?

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Averill: Overruled. He may answer if he knows.

A. I do not know.

By Mr. Weisman.

Q. Did Abraham & Straus, in or about November, 1932, ever divulge that statement of policy of theirs to you? A. No, sir.

Q. Did they ever tell you that? A. That I do not recall.

- Q. You mean they might have said it, but if they did you have now forgotten it? A. That is right.
- Q. Did they ever state to you that they had informed the Guild in words or substance that they agreed that the copying evil is costing the retailer—and that they, Abraham & Straus, Inc., would like to see this minimized? A. Well, are you quoting that?

11246

Mr. Haycraft: I object.

Mr. Weisman: I object to the witness interrogating me, yeur Honor. It is just another evidence of rebellious, contumacious and recalcitrant spirit that this witness is evidencing.

Mr. Martin: Oh, my, my, my.

Examiner Averill: He is asking you if you did; I think you can answer that.

By Mr. Weisman.

- A. I do not understand it, and I do not know of any such statement.
- Q. Do you recall whether or not— A. What is that?
 Q. Do you recall whether or not you became aware of the fact in 1933 that the F.O.G.A. proposed to take in, through some form of membership, the manufacturers of
 - Q. 1932, I mean. A. I do not know.
 - Q. You never heard of that before now? A. About 1932?
 - Q. Yes. A. That the Guild intended to do so?
 - Q. Yes. A. No, I did not.

\$10.75 merchandise? A. 1933?

- Q. Did you ever urge upon the Guild in 1932 that the proper— A. What is that?
- Q.—In words or in substance, that the proper protection of all of this merchandise that was being carried by your stores would require that the Guild take into its membership manufacturers of garments costing \$10.75? A. Not in those words.
- Q. I did not ask you whether you urged in those words. I particularly said not in words, and I said in substance did you urge upon the Guild that they should take into the Guild manufacturers of merchandise costing \$10.75, or costing \$10.50? A. I cannot answer that by "yes" or "no."

- Q. All right. Did you not a moment ago say—or, as a matter of fact, without any regard to what you said a few moments ago, did you not learn in 1932 that the Guild proposed to take into its membership the manufacturers of \$10.75 merchandise? A. I do not recall that I learned any such thing.
- Q. Or any similar thing? A. No.
- Q. Did you learn in or about May, 1933, that the F.O.G.A. was about to admit into some form of membership the \$10.50 manufacturers? A. That refers to 1933?
 - Q. Yes. A. I did not.
- Q. I show you Respondents' Exhibit 45 for Identification, the same being a photostatic copy of a page of "Women's Wear Daily," and ask you whether or not in August, 1933, you saw that? A. I may have seen it. I do not recall.

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- Q. You do not recall? A. No.
- Q. You remembered very definitely that you saw Commission's Exhibit No. 899 in the "Women's Wear," the same being a small article about 2 inches wide by 4 inches long, and notwithstanding that you cannot say whether you saw an article which covers two-thirds of a page, approximately; is that so?

Mr. Haycraft: I object to that as argumentative. Examiner Averill: Let him answer. The objection is overruled.

Mr. Haycraft: He has said he had not. What 112s is the use of all this?

A. I cannot tell you anything more than I have before.

By Mr. Weisman.

- Q. That is your best answer? A. I do not recall it.
- Q. Do you deny that you saw it? A. No, sir; I do not deny it.

Q. It was a subject-matter that was not of interest to you? A. No, sir; it was not.

Q. Did you think it was of interest to the members, or member stores of the A.M.C.? A. I think not. I am sure that it was not.

Examiner Averill: Gentlemen, I think that until the paper is in evidence that these questions are not proper in regard to the contents thereof.

By Mr. Weisman.

Q. I show you Respondents' Exhibit No. 44 for Identification, the same being a full page advertisement appearing in "Women's Wear" of July 11, and ask you whether or not you saw that at any time?

Mr. Haycraft: What year? Mr. Weisman: '33.

A. I may have.

By Mr. Weisman.

Q. As a matter of fact, did you not? A. No. I cannot say.

Q. Do you not know? A. You want me to say if I do not recall it? I do not recall having seen-that.

Q. If you had seen it, would you remember it?

11256

11255

Mr. Hayeraft: I object to any further interrogation along this line as repetitious, and of no value in the record.

Examiner Averill: I do not think until the paper is received in evidence, or is introduced in evidence, that this line of interrogation would be proper.

Mr. Weisman: Then I will go to something else for a moment and return to it later.

By Mr. Weisman.

Q. Do you not regularly read "Women's Wear"? A. Yes, sir; I do.

Q. Do you think that it is possible that you, who daily read "Women's Wear," would miss a full page advertisement announcing that the dress——

Mr. Haycraft: I object to that as reading from a document that is not in evidence.

By Mr. Weisman.

Q. What is almost a full page advertisement such as this?

11258

Mr. Haycraft: I object. He said he did not. Examiner Averill: Sustained. The witness says he does not remember so.

Mr. Weisman: I am trying to refresh his recollection. People who have flexible recollections need to have them stimulated from time to time.

Mr. Haycraft: I object to any further interrogation and use of this exhibit.

By Mr. Weisman.

Q. Is it not a fact that the A.M.C. and the F.O.G.A. both regularly have used the "Women's Wear Daily" as a media of getting notices to the trade generally, a policy adopted by both of them?

11259

Mr. Haycraft: I object.

Mr. Weisman: This is a different question.

Mr. Haycraft: He can answer for the A.M.C., but how can he answer for the F.O.G.A.?

Mr. Feldman: He can answer it as an expert. He certainly was called upon to answer everything else that the F.O.G.A. did, including blowing its nose.

Mr. Weisman: The question is not any good any way, because it does not say so with any definiteness. Examiner Averill: He can answer that question, Objection overruled.

A. Yes, sir, I know that.

Mr. Weisman: I offer this in evidence.

Mr. Haycraft: No objection.

- ·Q. Mr. Bergdahl, prior to the date appearing on these advertisements, the earlier of which is July 11, 1933, and the later one of which is August 9, 1933, the same being Respondents' Exhibits Nos. 44 and 45, respectively, did you not at a meeting with the Guild officia's urge upon them that they should take into their n mbership the \$10.50 manufacturers? A. No, sir.
 - Q. You are certain of that? A. Yes, sir.
- Q. I ask you to look at the minutes of a meeting held on and in the Garment Center Capital Club on February 17, 1933, at which were present a number of men who were from resident buying offices, including your offices, and at which there were present a number of people from the F.O.G.A. and at which you were present. A. No, it does not say that and I do not recall that I was present. I wish I had been. It was a good letter. It is good minutes.

Q. In other words, you say that these minutes do not refresh your recollection of having attended such a meet-

ing? A. No, they do not.

Q. By the way, during this period-that is, the early part of 1932, or, rather, the latter part of 1932 and the early part of 1933, was Mr. Reilly, your superior, equally active as you in connection with the Guild program? A. In 1932?

Q. The latter part of 1932 and the early part of 1933. A. We were active together. I was active in the market and in the contacts with manufacturers and with the

11262

F.O.G.A. I discussed it with him and he frequently passed on information to the store owners as I passed it on to him; but as far as market contacts were concerned, I was the most active.

Q. Referring to Respondents' Exhibit 44, I notice that it is a full page advertisement by the Dress Creators League of America, Inc., and that it is signed by, among others, Baum, Kravat & Baum, 550 Seventh Avenue—

Mr. Haycraft: I object to that? The wines said he did not see that.

Examiner Averill: I do not know whether he is going to ask him that now, as to whether he saw it, or not. The question has not been finished. The exhibit is in evidence and we will see what the basis for all of this is.

Mr. Weisman: If you will kindly refrain from interrupting me until my question is completed——

By Mr. Weisman.

- Q. Do you know who Baum, Kravat & Baum of 550 Seventh Avenue were in July, 1933? A. I was familiar with them.
 - Q. Who were they? A. They were dress manufacturers.
- Q. What price dresses did they manufacture and self; to your knowledge? A. At that time, I think \$10, \$10 to \$12.
- Q. Do you know whether or not they had their own 11265 designing staff? A. No, sir.
 - Q. No? A. No, sir.
- Q. When you say "No, sir," do you mean they did not have or you do not know? A. I do not know.

By Mr. Weisman.

Q. I notice from Respondents' Exhibit No. 44, that the Dress Creators League of America, Inc., advertises in the

"Women's Wear Daily" of Tuesday, July 11, and stated the following: "The members of this organization maintain extensive designing facilities and create every model presented by them. In dealing with League concerns, retailers who have signed the Guild's 'Declaration' can have absolute confidence that they are faithful to their pledge." Do you agree with that statement?

> Mr. Haycraft: That is objected to. Examiner Averill: Sustained. • Mr. Weisman: Exception. Examiner Averill: Noted.

11267 . By Mr. Weisman,

Q. Do you know who the members of the Dress Creators League were in July, 1933?

> Ma Haycraft: That is objected to as not proper cross-examination.

> Examiner Averill: I believe I understand, counsel, that the members are shown thereon, and why do you not ask the witness to take the exhibit and ask him whether he knows whether they are the members?

Mr. Weisman: I shall be most happy to adopt your Honor's suggestion.

By Mr. Weisman.

11268

Q. I show you Respondents' Exhibit No. 44 and ask you to look at that, and from looking at it can you tell me, or tell us, who were the members of the Dress Creators League of America, Inc., in July, 1933? A. Every member?

Examiner Averill: As far as you know, are the names on that paper the names of the people who

at that time were members of the League—will you say?

The Witness: They were, as far as I know.

By Mr. Weisman.

Q. The members of this Dress Creators League that consisted of the following: Baum, Kravat & Baum, 550 Seventh Avenue, F. E. D. Dress Co., Inc., 1400 Broadway, Goldman Frock Co., Inc., 1384 Broadway, International Dress Co., Inc., 1400 Broadway, Jomark Dresses, Inc., 1375 Broadway, Parisian Manufacturing Co., Inc., 550 Seventh Avenue, C. H. D., Robbins Co., 1375 Broadway, New York Dress & Costume Co., Inc., 1375 Broadway, Rosen Brothers Frocks, Inc., 1400 Broadway, Sakin & Levine, Inc., 1400 Broadway, Sheila Lynn Dresses, Inc., 525 Seventh Avenue. A. Yes.

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Q. From your experience in this business, do you know who the F. E. D. Dress Company, Inc., 1400 Broadway, New York, N. Y., were, and what price dresses the F. E. D. Dress Company, Inc., were manufacturing in July, 1933?

Mr. Haycraft: I object as not proper cross-

Examiner Averill: What?

Mr. Haycraft: I object as not proper cross-examination, and incompetent, immaterial and irrelevant.

Examiner Averill: I do not know anything about this thing. We have had some reference by the witness to this particular dress concern.

Mr. Haycraft: No in his direct examination.

Examiner Averil: The witness has spoken of it before. Overruled.

A. As I recall it, they made \$10.75 dresses.

By Mr. Weisman.

Q. They also made cheaper dresses—they also make cheaper-priced dresses? A. I think not.

Q. Do you know what priced dresses the International Dress Company, Inc., 1400 Broadway, New York, N. Y., made in July, 1933?

Mr. Haycraft: Same objection.

Examiner Averill: Why not ask him about all of them in one question?

Mr. Weisman: Because some of them did and some of them did not. I just wanted to pick out the ones who did.

Mr. Haycraft: I say that I object to all of this because I think we are going into a cross-examination now that is not based upon the direct testimony of the witness, and is incompetent, immaterial and irrelevant for any purpose whatsoever.

Mr. Weisman: It took you four and a half days to get in absolutely nothing, and it is going to only take me a short time to bring out the facts, and I do not see what you are complaining about.

Mr. Haycraft: What is that?

Mr. Weisman: It took you four and a half days to get nowhere. Why, you are the last one to complain.

Mr. Haycraft: Is that so?

Examiner Averili: Proceed and get along, or none of us will get anywhere.

By Mr. . Weisman.

Q. Bo you not know that a lot of these dress manufacturers who were members of the Dress Creators League of America, Inc., in July, 1933, or at or about that date, or in the season ensuing shortly thereafter, made dresses that sold at less than \$10.50? A. I know that they made \$10.50.

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Q. Now, look. Do you not know what I asked you?

Examiner Averill: Did he not answer it?

Mr. Weisman: No. He stalled and slid around the corner. I asked him whether he knew that.

Examiner Averill: He answered that he knew they made \$10.50.

Mr. Weisman: Quite true, your Honor, but I asked him more than that. That does not exclude him from knowing any other fact.

Examiner Averill: Proceed.

By Mr. Weisman.

Q. Do you know whether any of these people— A What?

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- Q. First, you were divisional merchandise manager of the A.M.C.? A. Yes.
- Q. An organization purchasing \$50,000,000 worth of women's and misses' ready-to-wear during the year, ladies' ready-to-wear, were you not? A. Yes.
- Q. Did you not acquaint yourself with the conditions of the markets? A. Yes.

Q. Did you not? A. I did.

Q. From such experience and acquaintanceship which you gathered in the line of your duty, do you know whether or not any of these firms mentioned in this Respondents' Exhibit No. 44 made, manufactured or sold dresses at less than \$10.50? A. I think there was some of them that did. I am not sure, however.

Q. Why did you not tell us that before? A. You did not ask me.

Q. Tell us who you think did, as indicated by the names set forth on Respondents' Exhibit 44?

Mr. Haycraft: I object to that as immaterial. Examiner Averill: I am sorry, but I must sustain the objection. I do not think we can go any

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further because it is not proper cross examination. I have allowed it so far, hoping something would develop, but I have not seen it yet.

Mr. Weisman: Exception. Examiner Averill: Noted.

By Mr. Weisman.

Q. Now, there were some of your member stores, Mr. Bergdahl, were there not, who felt that the policy of the Guild tending to curb style piracy was a beneficial one?

Mr. Haycraft: I object unless you make it more definite as to time.

Examiner Averill: Gentlemen, there appears to have been a certain time when there were certain and substantial members who did coincide with the idea, and it appears that later there was a change in the feeling of some of them. How many, I do not know, but there was, so I think that that is a reasonable request by counsel.

By Mr. Weisman.

- Q. Let me see, Mr. Bergdahl. A. Yes.
- Q. Your A.M.C. has eighteen or twenty members? A. Twenty.
- Q. Hutzler Brothers, Baltimore, Md., are one of these members, are they? A. Yes.
- Q. In your opinion, are Hutzler Brothers at this date in favor of the style protection as laid down by the Guild? A. I could not answer that "yes" or "no."
 - Q. Do you not know? A. No.
 - Q. All right, I will take that as your best answer.

By Mr. Weisman.

Q. Do you know whether or not Hutzler Brothers, Baltimore, to the best of your knowledge are to-day co-operating with the Guild?

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Q. Are they members of the A.M.C.? A. They are.

Examiner Averill: Objection overruled. (Question read.)

A: They are co-operating, as far as I know,

- Q. And they are members of the A.M.C.? A. That is right.
 - Q. Do you know the Horne Company? A. Yes, sir.
- Q. What is the full name of that company? A. Joseph Herne & Company.
 - Q. Of where? A. Pittsburgh, Pa.
 - Q. Are they members of the A.M.C.? A. They are.
- Q. Do you know whether or not they are to-day cooperating with the Guild? A. As far as I know, they are co-operating.
- Q. Do you know Bullock's, or is it Bullocks Wilkshire? A. Both.
- Q. One of them is Bullocks-Wilkshire at Los Angeles, and Bullock's is in Los Angeles, too? A. Both of them are. One of them is a branch of the other.
 - Q. And they are both in Los Angeles, Calif.? A. Yes.
- Q. Do you know whether or not they are co-operating with the Guild? A. As far as I know, they are co-operating.
 - Q. They are also members of the A.M.C.? A. Right.
- Q. Do you know the L. S. Ayres Company? A. Yes, sir.
- Q. Do you know whether or not they are co-operating with the Guild? A. Yes.
- Q. Are they members of the A.M.C.? A. Yes.
- Q. Do you know whether or not the B. Forman & Company are members of the A.M.C.? A. Yes.
- Q. Are they? A. They are.
- Q. And are they co-operating with the Guild? A. As ar as I know, they are.

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- Q. What about the Reich-Shumler Company? A. As far as I know, they are co-operating.
 - Q. They are members of the A.M.C.? A. Yes, sir.
- Q. Have you discussed this matter with any of the executives of some of the well-known leading department stores of America? A. Yes.
- Q. Have you discussed it with the Marshall Field representative, Chicago? A. No, I think not:
- Q. Would you say that Marshall Field of Chicago is a department store which handles both high and lowpriced merchandise?

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Mr. Haycraft: I object as incompetent, immaterial and irrelevant.

Examiner Averill: He may answer that question

A. Yes, they do, yes.

By Mr. Weisman.

Q. On your direct examination, you gave it as an answer to a hypothetical question, that you felt that a store having a basement shop and a high-priced shop above would be at some disadvantage in co-operating with the Guild program? A. Yes.

Q. If Marshall Field Company, and the executives thereof, had expressed a directly contrary opinion to that, and had stated that their experience showed it was beneficial, would that in the smallest degree change or affect your opinion? A. That would not affect my opinion in the slightest iota.

By Mr. Weisman.

- Q. Do you know the Powers Company, Minneapolis? A I know of the Powers Company in Minneapolis.
- Q. Do you know what business the Powers Mercantile Company is in? A. They are a department store.

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- Q. Where? A. Minneapolis.
- Q. Minneapolis, where? A. Minnesota.
- Q. They handle goods of all ranges, expensive and cheap goods, and maintain a basement department? A. I think they do. Yes.

By Mr. Weisman.

- Q. Now, in or about July, 1933, you, on behalf of the A.M.C., signed a declaration of co-operation, did you not? A. The last week in June, I believe we signed such a declaration.
- Q. Well, you say "we," but you did sign it on behalf of the A.M.C.? A. I signed it, yes.

Q. Did you? A. Yes.

- Q. Did you sign it on behalf of the A.M.C.? A. I did.
- Q. Before you signed it you went over it carefully? A. Yes.
- Q. You made sure, did you not, that it contained the full agreement, did you not? A. No, I did not.
 - Q. Did you make any changes in it.? A. No, sir.
- Q. You did not? Are you sure of that? A. I think not, as I recall it, but I may have.
- Q. If it required any changes, would you have made them? A. No, I think not, with the understanding that I had with Mr. Rentner.

Mr. Haycraft: What is that?

Mr. Weisman: I ask this declaration of cooperation that was signed by the A.M.C., one page, be marked Respondents' Exhibit 88 for Identification.

Examiner Averill: It may be so marked.

By Mr. Weisman.

Q. I call your attention to Respondents' Exhibit 88 for Identification, and ask you whether or not this is the

declaration of co-operation signed by you and transmitted to the Guild, and, furthermore, that when you signed it, you signed it personally, or on behalf of the A.M.C.? A. That is the declaration that I signed on behalf of the A.M.C.

- Q. That is your handwriting? A. It is.
- Q. Below? A. It is. It states for the New York office only, however.

By Examiner Averill.

- Q. Is this the paper to which you referred just a moment ago in which you stated, then, you stated, that you stated it some time in the last week of June, 1932?

 A. Yes, sir; this is the one I signed some time in the last week of June, 1932.
 - Q. The reason I asked you that, the paper bears no date, but bears a stamp on there showing it was received July 5, but it did not give any year. A. Yes, sir.

(Whereupon, at 4 o'clock P. M., November 25, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway, New York, N. Y., December 1, 1936.

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Met, pursuant to adjuornment, 10 A. M.

Before: EDWARD M. AVERILL, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: You may proceed, gentlemen, whenever you are ready.

H. O. BERGDAHL resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Bergdahl, with regard to your statement, which is, in words or substance, that you felt that a department store handling low-priced and high-priced merchandise was somewhat at a disadvantage by reason of the Guild program, would it change your answer if you were advised that Mr. Perry Schneider, whom we have previously identified, had testified in words or substance that his store, the Powers Mercar-tile Corporation, found that non-cooperating competitors had no advantage over them in the sale of low-priced merchandise in the Minneapolis, Minn., market? A. It would not change my testimony.

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Mr. Weisman: I think that is the point of the question.

By Mr. Weisman.

Q. I think at your last examination you chose the words, with regard to a similar question, that it would not change your testimony—you mean it would not change your opinion; is that so? A. Yes, I mean it would not change my opinion.

Q. I believe you testified that it would not change your opinion one iota; do you remember that? Do you re-

member using that language? A. Yes.

Q. Would you say the same thing with regard to the lack of change of opinion to the present question, that it would not change, or that the charge would not even be to an iota? A. Well, that is making it kind of technical, but that is the way I feel about it, it would not change my opinion one iota.

Q. That is what I want to know; it would not change four opinion one iota? A. Yes.

- Q. Mr. Bergdahl, in 1932 in about November, and for some time prior thereto, you had testified, I believe, that you had numerous conversations with officers of the Guild concerning their program; is that so? A: In substance, I think so.
- Q. You were then in the same position as you are now? A. Yes.
- Q. And to some degree did you not feel that this Guild movement was an important movement in the ladies' ready-to-wear, and one that affected the business of those stores whom you represented? A. I did at that time.
- Q. Did you not, with that belief, reasonably seek to inform yourself as to what was going on with relation to this program? A. I do not know just how to answer you on that.
 - Q. Answer me as best you can. A. I was working in the ladies' ready-to-wear, and I was interested in the problems incident thereto. I did not seek any outside assistance, however.
 - Q. I did not ask you that. A. No, but I mean-well-
 - Q. Did you not think it was part of your duty, as an executive, representing a lot of these stores, to learn all that you reasonably could about what was going on in relation to this program? A. Well, I do not know just how to answer you. I was interested in the program. I have told you that. You mean, did I seek any contact with the Guild to find out what was going on, and so forth?

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Q. No, I do not mean that. I mean, were you not interested in knowing what the Guild was doing, and what it planned to do? A. I was not as interested about the program at that time, as I recall, as I was in 1933 when it became very pertinent and more direct as far as I was concerned.

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By Mr. Weisman.

Q. What I am trying to find out from you is whether or not it had ever come to your attention that in November of 1932, at a meeting which was attended by the following: Mr. C. G. Sheffield, chairman, representing B. Altman & Company; Mr. Philip Le Bouttelier, representing Best & Company; Mr. Charles S. Hobbs, of James McCreery's; Mr. D. I. Nemerov, of Russek's; Mr. L. C. Palmer, of Lord & Taylor; Mr. George Ladd, of Abraham & Straus, over here in Brooklyn; Miss Dorothy Shaver, of Lord & Taylor; Mr. Edward Currier and Mr. E. Burnham, and the Guild executives; and that it was at that time suggested and requested of the Guild that they take into their membership manufacturers of merchandise wholesaling at the price range \$10.50. A. It did not at that time.

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By Mr. Weisman.

- .Q. When you say that it did not come to your attentionat that time, did it come to your attention at a subsequent time that such request had been made to the Guild?
- Q. You have not heard about it prior thereto? A. Not that I recall, I will say it that way.

Mr. Haycraft: I move to strike the last four questions and answers as irrelevant, incompetent and immaterial.

Examiner Averill: The motion is denied at the present time. I want to see where this is looking to.

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By Mr. Weisman.

- Q. Let me ask you this- A. Yes.
- Q.—you said that you do not remember having heard about it. Do you know Mr. Ladd? A. Very well.

Herbert L. Bergdahl—For Commission—Cross.

- Q. Mr. Ladd is an executive of Abraham & Straus? A. Yes.
- Q. Abraham & Straus is one of the A.M.C. stores? A.
- Q. Abraham & Straus is also a member of the Federated Stores; is that so? A. Yes.
- Q. The Federated Stores, how many stores are together in the Federated Stores? A. Six.
 - Q. Six? A. Six.
- Q. Those are what stores, by name? A. John Shillito-Company, Cincinnati; F. & R. Lazarus Company, Columbus, Ohio; Bloomingdale Brothers, New York City, N. Y.; Abraham & Straus Company, Inc., Brooklyn, New York; R. H. White & Company, Boston, Mass. Also, Wm. Filene's Sons Company of Boston, Mass.
- Q. In other words, those stores that you have named are all in one ownership; that is, in the Federated Stores? A. They are in a holding company.
- Q. Yes, and— A. Which is called the Federated Department Stores.
- Q. All of these Federated Department Stores are members of the A.M.C.? A. That is right.
- Q. Mr. Ladd is an executive of Abraham & Straus, Inc.? A. He is.
 - Q. Over here in Brooklyn? A. Right.
- Q. Do you know from your experience whether or not Mr. Ladd, or other representatives of Abraham & Straus, from time to time does speak for the other members of the Federated Department Stores? A. I have never heard of it.
- Q. You have neard heard of it? A. I have never heard. of it; not for a merchandising manager of Mr. Ladd's standing speaking for the other stores.
- Q. Would you think that in November, 1933, Mr. Ladd of Abraham & Straus discussed with you, prior to making a request to the Guild, the fact that it was his desire that

the Guild take in-and when I say "his," I mean as speaking for his store and for the Federated Department Stores -that the Guild take into its membership the manufacturers of \$10.50 dresses? A. I do not believe that Mr. Ladd made such a request even if he was present at the meeting, from conversations I have had with him at that time and subsequently.

Q. You do not remember Mr. Ladd ever discussing that with you? A. He discussed the subject of whether or not the \$10 and lower-priced manufacturers should be in the Guild, but it was always from a negative point of view, or, rather, from the point of view of the impossibility or difficulties of doing such a thing.

Q. You mean, the impossibilities of getting them in? A. Well, the difficulties involved in connection with getting. them in, the impossibility as far as the retailer enforcing.

it rather than getting the manufacturers in.

Q. Did Mr. Ladd, in these conversations, ever say to you in words or substance that it would be a good thing if we could get all of the legitimate manufacturers of \$10.50 dresses into the Guild? A. No, I do not recall that he ever said that in words or substance that way.

Q. Did he ever say it in substantially that way if he did not say it that way? A. No, not even substantially.

Q. Did he ever express to you the belief that it would be a good thing if we could get into the Guild all of the \$10.50 manufacturers? A. I do not recall that he ever did; no.

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Q. Do you deny that he ever did? A. No, I do not deny it, but I am quite positive that he did not.

Q. In or about November, 1933, now you did have, you have testified, certain conversations with Mr. Ladd; did you not? A. Yes. As I recall it, I did.

Q. You recall that you had such conversations? A. Oh, I saw him quite often. I do not recall any particular conversations.

Q. Notwithstanding the fact that you saw Mr. Ladd quite often, and notwithstanding the fact that you had certain conversations with him, you have no recollection of his ever stating to you, either in words or substance, that at the meeting which I have just referred to this idea of taking into the Guild the \$10.50 manufacturers, that this was suggested by those members at that meeting, to the Guild? A. I cannot recall that that was ever said.

By Mr. Weisman.

- Q. I understood you to testify a few moments ago that it was not until 1935 that you learned of the intention of the Guild to take in \$10.50 manufacturers; that is, manufacturers who sold their garments at \$10.50; that is correct? A. No, I do not say so. I do not say that.
 - Q. What did you say? A. My testimony had reference to the request made by the—whether I knew that the request had been made by the New York retailers, and I told you that I had not learned of it until this case had started. I had not learned of the request that you say was made.
 - Q. You did learn, however, that the Guild in its program was seeking to protect merchandise all the way down? You learned that at some time or another, did you not? A. Yes.
- Q. When did you say you first learned that? A. Why, I would say I first learned that around the first part of 1935, that they wanted to go further into the low-priced brackets than they had previously.
 - Q. Did you not really learn that in 1933? A. Yes, I did learn it in 1933 with the qualification I have made that there were exemptions for certain stores; that is, for our groups of stores, and for the members of the A.B.O. I knew that the Guild was planning at that time to pro-

teet their merchandise down in the low brackets, lowpriced brackets, but they did give us an exemption, the exemption that I have mentioned.

Q. So that away back in 1933 you knew that it was the policy of the Guild to protect Guild merchandise all the way down to whatever cost price the copy might be made; is that a fact? A. Yes, with the definite understanding—

.Q. Yes, we have heard your understanding as set forth in your previous testimony.

Mr. Haycraft: I object to the witness being interrupted. I think the witness has a right to complete his answer.

Examiner Averill: I think he is entitled to qualify his answer to that.

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A. —with the definite understanding that we had arrived at in public meetings, joint meetings with Mr. Rentner.

By Mr. Weisman.

Q. That they would extend leniency? A. And for that reason we did not consider the statements there or paper very important when they made these exemptions to us, and we did not consider these very seriously; in fact, we did not consider them so very serious about their own program in the lower-priced brackets until 1935, and then we did, and—

Q. Did you ever- A. -we consider them seriously.

Q. Did you ever advise, in writing, any one of your member stores of this claimed exemption? A. I did—I am not sure—I do not think I did—I am not sure but Mr. Rentner said he wanted—

Q. No, no, no. That is the answer to the question. You say you do not think that you did. A. Yes.

Q. There is no question that from 1933 the Guild was almost constantly communicating with your members, and

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by way of these communications advising your members in words or in substance that it, the Guild, was protecting the merchandise of its members down into all prices in the lower brackets; that is a fact, is it; down to and including all price ranges? A. I know they wrote to members, but I do not know the contents of all of the letters.

By Mr. Weisman.

- Q. Of course, you do not know the contents of all the letters, and I did not ask you for that, but you know the contents of those letters which you saw, do you not? A. Yes.
- Q. As to those letters that you saw between the Guild and your members, did not the Guild in those letters that you saw advise your members that it, the Guild, intended to protect the merchandise of its members into all price ranges?

Mr. Haycraft: Same objection.

Examiner Averill: Objection sustained. I do not see how he can characterize what the Guild said in its letters.

By Mr. Weisman.

- Q. You saw a lot of letters that were sent by the Guild to the members of your organization; namely, the A.M.C.?

 A. No, I cannot say that I saw very many before 1935.
 - Q. You saw some. I did not ask you whether you saw very many. You saw some? A. I do not deny that I did. I do not recall what I saw, and what I did not see at this moment sitting here.
 - Q. Did you see any? A. I am not sure I did, but I do not know. I cannot recall any specific letter right now in evidence.

Examiner Averill: He did not say that. Just say "yes" or "no," and you are through with it. Do not try to enlarge the answers because it does not help very much.

The Witness: I answered that I am not sure I did.

Examiner Averill: Do not enlarge the answer if you can avoid it.

By Mr. Weisman.

Q. From these letters which you saw, did you not at that time receive in your mind the mental belief that the Guild intended to protect all merchandise irrespective of 11318 prices if the copy was of originations made by one of the members of the Guild? A. No.

- Q. No? A. No.
- Q. You did testify, did you not, that you saw Commission's Exhibits 99-A to E, a letter dated June 16, 1933, did you not? A. I recall that such a letter was sent, but I do not recall seeing it at the time, I think.
- Q. Did you not testify on direct examination that you saw it?

Mr. Haycraft: No, he testified just to the contrary.

Mr. Weisman: Very kind of you to prompt the It is a good thing you are not in our Supreme Court, because they do not permit that type of practice there.

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Examiner Averill: He does not deny that he

Mr. Haycraft: He said just see-

Mr. Weisman: Why not let the witness testify, if Mr. Haycraft is going to testify, let him be sworn.

Examiner. Averill: Proceed with your questions, Mr. Weisman.

By Mr. Weisman.

Q. Did you not testify on your direct examination that you saw that letter on or about June, 1933?

Mr. Haycraft: I object as contrary to the testimony.

Mr. Weisman: Let the witness answer the question.

By Mr. Weisman.

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- Q. Did you not so testify? A. I am not sure whether I did or not.
- Q. And if you did so testify, do you deny that it was correct that you saw it at that time?
- Q. I show you Commission's Exhibits 99-A to E. A. Yes.
- Q. What is your present recollection of the time when you first saw this? A. Well, I am not sure. I may have seen that letter in 1903—
 - Q. 1903? A. 1933, and I may not have.
 - Q. What? A. I may have not.
- Q. No? A. I know the subject-matter of the letter so thoroughly—I know the subject-matter of the letter was thoroughly discussed at our joint meetings.

- Q. When? A. June, 1933.
- Q. Will you deny in June, 1933, you knew in substance the subject-matter of Commission's Exhibits 99-A to E? A. Yes, I did know in substance everything in the letter here; that is, I knew the things that are referred to in here.
- Q. Is it a fact that this letter, Commission's Exhibits 99-A to E, was sent out by the Guild representatives at

your conferences with representatives of the stores, and at which conferences you were present? A. Yes.

Q. In this letter we have this statement: "This convinced the managements of those large stores that by the same method of refusing to purchase low-price copies from \$10 down they would eliminate copying in these price ranges as well and encourage original designing of popular priced goods so that they would find a sufficient and plentiful market of original designs in all price lines." A. It does contain that statement.

Q. Did not that statement, contained in this letter and sent out by the Guild to your members, convey to them, or, rather, convey to your mind the idea that the Guild at that time in 1933 was desirous, as part of its program, of protecting priced merchandise of its members all the way through, from copying in all price ranges? A. No.

Q. All right. A. Definitely, no.

Q. Would you say positively? A. Definitely, no, because of the understanding we had with the Guild, and I want to put that in because that is the crux of this whole thing, at least as far a our agreement is concerned.

Q. This letter goes on further and says: "The feasibility of our plan, as a means of combatting destructive practices, has been clearly shown by the fact that the National Administration, in its Industrial Recovery Act, has sponsored procedure similar in character to that outlined by the Guild. It is evident from the Government's action that other industries, as well as ours, are suffering from what might be termed 'racketeering methods of business conduct.'" You knew that the letter contained that statement, did you not? A. Yes.

Q. You knew that the racketeering methods of business conduct therein referred to was the piracy of members of the Guild's originations? A. No, I did not.

Q. You did not know that that was what that letter referred to? A. No, I did not.

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- Q. You knew, did you not, that that letter, sent out on June 12, 1933, contained the memorandum of the Guild's resolution, and the statement that that was the Guild's resolution and referred to it as follows: "Memorandum of the Guild's resolution and its significance." You knew that, did you not? A. Well, I knew there were attachments, but I never read them. I never read that attachment.
 - Q. You never read this statement? A. No.
- Q. The letter referred to the attachment, did it not?

 A. I did not know. Read it, and if it did, it did.
- Q. You did not read it? A. I have testified that the letter contained—
- Q. The letter says as follows: "Our action is expressed in the enclosed resolution, which provides that: 'All retailers who wish to have access to our showrooms and purchase our merchandise shall sign a "Declaration of Good Faith," a copy of which we are submitting herewith." A. I have seen that copy and that is not attached to that.
- Q. As a part of the letter, there was a statement, or a copy of a Guild resolution, and the explanation of that and of its significance is attached to it, referring to "d." You did not expect to stop and read that, or, at least, you say now that you did not spend the time to read that; is that it? A. No, not that I recall, Mr. Weisman.
- Q. Did you know that 99-E, the communication from the Guild, says: "You will note that this resolution plainly stipulates, in order for a retailer to have access to any Guild house he must consent to abide by the conditions set forth." The conditions set forth being in the resolution; did you read that? A. I have read it since then.
- Q. No, did you read it then? A. I am quite sure I did not.
- Q. This letter went, not alone to you, but went to each of your accounts, or to the stores that you represented? A. I do not think it went to me or to the A.M.C., but I think it went to our accounts.

Q. You think it went to your accounts? A. Yes.

Q. To each of them? A. Yes.

Q. And they sent it to you? A. I think so, although I am not sure, because none of the copies that I saw had any stores names on them, on which it appeared that it went to anyone.

Q. Do you not know who they came from? A. I do not know. I do not. No. They may have been furnished by the Guild, they may have sent blank copies, they may have, subsequently. I am not sure how I got them because I have none addressed to the A.M.C., and I have none that have the stores' names on them.

Q. Let me ask you, when this came to your attention in 1933, did you not think that it was an important piece of communication?

Mr. Haycraft: I object to that. The witness has said that he did not know how it came to him.

Examiner Averill: He said it did come to him, and I think he can answer that question as to whether he deemed it important in the light of his knowledge at that time, whether he deemed the paper, himself, important.

A. I was so positive that we had an understanding, a workable understanding with Mr. Rentner, that this letter did not make any difference to me. I was told that it should not make any difference; that, I think, they recognized our problem, and not only was I told that, but others were told that, and I think they had the same idea that I had about this. It definitely would not make any difference about the letter because we were told that we might more or less ignore it, and that they would work this problem out with us, so it would not be a handicap to us.

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Herbert L. Bergduhl-For Commission-Cross.

By Mr. Weisman.

. Q. So you now state the letter was unimportant? No, I do not say that.

Examiner Averill: He says its importance thim was governed by an arrangement which is states he had with the Guild which covered the letter and its contents. He did not say it was, per sunimportant. It may have been important.

By Mr. Weisman.

Q. Was it important to you? A. Not to me, Mr. Wei 11333 man, for the reasons I have given.

Q. Have you ever seen John Gielgud's "Hamlet"?

Q. Did it ever strike you that you are protesting verifreely your innocence in this regard?

Mr. Haycraft I object to dragging Hamlet int this case.

Mr. Weisman: You do not like his shad standing at your side?

Examiner Averill: I do not think it has any paticular bearing on the case, gentlemen. Proceed to something else.

Mr. Weisman: Very well, but I am sure you Honor sees the point.

11334 Mr. Haycraft: Undoubtedly.

By Mr. Weisman.

Q. What did you do when this came to your attention nothing? A. No, I did not do anything. I had a thoroug understanding with Mr. Rentner that there was nothin to do.

Q. Then, your answer is that you did do nothing?

Mr. Haycraft: I object. The witness should be allowed to answer the question.

Examiner Averill: All right, he said he did nothing, and he told the counsel why.

Mr. Haycraft: He is entitled to make an explana-

Mr. Weisman: He is entitled to tell the story of his life, but I hope not here.

By Mr. Weisman.

Q. In other words, you got a copy of this letter, and in so far as you were concerned, or in so far as the A.M.C. was concerned, as represented by you, you remained silent? 11336 A. Yes.

Q. Let me now read your testimony appearing at page 6187 of the record with regard to this exhibit.

Mr. Haycraft: What page? Mr. Weisman: Page 6137.

Mr. Feldman: That is the direct testimony of the witness.

Q. Did you know that in or about June, 1933, the garment merchandise managers of the A.M.C. had a meeting with reference to the Guild program? A. We had.

Q. Or is that one of the things which you do not remember?

Mr. Haycraft: I move to strike the last part of 11337 the question.

The Witness: No.

Examiner Averill: The motion is granted. There is no reason for putting a question that way. Put the question and let us see from his answers whether he did. There is no sense in putting a question that way. The latter part of that question is different.

Mr. Weisman: All right.

Herbert L. Bergdahl-For Commission-Cross.

A. As I recall it, we had a meeting on or about that time, a regular meeting at which undoubtedly the F.O.G.A. was discussed.

By Mr. Weisman.

Q. And at that meeting the complete agreement, or the declaration of co-operation, was before the merchandise managers? A. Eh, um—

Q. Well, the "oh, oh" and the "eh, um," does that mean you do not remember? A. It does not mean anything.

Q. Then do not do it. I am trying to find out what it means. A. It does not mean anything. You asked me if the complete minutes and what not of the F.O.G.A.

Q. No, I did not ask you that. A. What did you say? What did you ask?

Mr. Weisman: Read the question.

A. You mean an the pamphlets you have shown me here, and attachments?

By Mr. Weisman.

Q. No, no. A. Is that what you mean?

Q. No, no. I.mean, you had before them, did you not, the declaration of co-operation which was being sought by the Guild from the stores? A. I would say that we did, yes.

Q. And that declaration had in it the one—the one that was before you was the one in evidence—

Mr. Weisman: What is its number, do you remember?

The Witness: 88.

Mr. Albert: 88.

Examiner Averill: Commission's?

Mr. Weisman: It is-

Examiner Averill: Or respondents'? Both have that number.

Mr. Weisman: This is respondents'.

Examiner Averill: Respondents' Exhibit 88.

By Mr. Weisman.

Q. This is in form, Respondents' Exhibit 80; is that not 80?

Examiner Averill: No, Respondents' Exhibit 88.

By Mr. Weisman.

Q. Respondents' Exhibit 88? A. I am quite sure we had that.

Q. Yes. /In that exhibit there is no exemption set forth, is there? A. That is right.

Q. At that meeting, I show you a photostatic copy of Commission's Exhibit 697, and ask you whether or not you recall that resolution being passed at that meeting by the

A.M.C. executives—not executives—A.M.C. merchandise managers? A. Yes, I recall that. I dictated it myself,

so I recall.

Examiner Averill: Let me see it.

(Mr. Weisman hands exhibit to the Trial Examiner.)

Examiner Averill: All right,

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By Mr. Weisman.

Q. Before that meeting was held, Col. Phillip J. Reilly whote a letter to these divisional—to all the garment merchandise managers of the A.M.C. stores, did he not? A. I think not.

Q. Well, did he write a letter to all the executives of the stores? A: I think he wrote to the general merchandise managers.

Herbert L. Bergdahl-For Commission-Cross.

- Q. He wrote to the general merchandise managers? A. Yes.
 - Q. Well, they are executives, are they not? A: Yes.
- Q. Yes. A. There are quite a few executives in the store.
- Q. Before he wrote that letter he had some conferences with you, did he not? A. Yes, he did.
- Q. And, as a result of these conferences between him and you, it was decided by him and you, or by you and him—pardon me—that Mr. Reilly, your superior, should send out a letter to the merchandise managers of all of the A.M.C. stores; is that not so? A. I think so, yes, some thing like that.

Q. Well— A. Whether I decided it, or he decided it, he sent the letter; he must have made the decision.

Q. Did you see the letter before it went cut? A. I am not sure that I did, no; I am sure I saw it afterwards but I am not sure that I saw it before.

Q. And you have no doubt that Mr. Reilly was your superior, have you? A. None whatsoever.

Q. And what he did superseded anything that you could do in the same matter, did it not? A. Well, he is my superior, he can change anything, he can do anything he liked in that respect about giving me instructions, if that is what you mean, or—

Q. That is your best answer to that question?

Mr. Haycraft: I object to that.

Examiner Averill: No, he may state it is his best, if he wants to, or it is not, if he wants to change it. I do not know. It is easy enough to answer one way or the other.

The Witness: I think the answer stands.

By Mr. Weisman.

Q. All right. A. The answer is specific.

Q. In this letter, Commission's Exhibit 696, which we have been talking about, Mr. Reilly wrote it on the letter-head—excuse me—make that Col. Reilly of the Associated

Merchandising Corporation, Retail Research Association, Phillip J. Reills, director—agreement with Fashion Origi-

nators Guild of America, Inc.—that referred to the agreement, Respondents' Exhibit 88; is that not so? A. Yes.

Q. And he wrote "At yesterday's meeting of their garment merchandising managers, consideration was given to the attached agreement prepared by the Fashion Origi-

nators Guild of America, which they are requesting the important department stores and women's ready-to-wear

specialty stores to sign." That referred to Respondents' Exhibit 88; is that not so? A. I am quite sure it did.

Q. He further goes on and says in this letter: "Although all these garment merchandise managers were in sympathy of the objectives of the F.O.G.A. in principle"—is that true? A. I think that is——.

Mr. Haycraft: I object to that unless it is a complete sentence, Mr. Examiner.

The Witness: I think that is-

Mr. Weisman: It is a comma there, I am going on further; I cannot—that is a complete thought.

Examiner Averill: Well, he says that is so. Mr. Weisman: Yes, that was true.

By Mr. Weisman.

Q. So that in 1933 it was true that the garment merchandise managers of all of your stores were in sympathy with the objectives of the F.O.G.A. in principle? A. As I recall it.

Q. Yes. A. That is true.

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Herbert L. Bergdahl-For Commission-Cross.

Q. The letter goes on further and says: "Some of them felt that unless their competitors all agreed to sign this contract it would result in the signing stores excluding themselves from many important houses who are non-Guild members, many of whom are important in the lower price lines, including basement." A. Yes, it reads that way.

Q. Yes. A. As I recallit.

Q. Now, that was also true at that time? A. What do you mean? Let me read it.

Q. It is this paragraph here (showing paper to witness).

(Witness examines exhibit.)

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Examiner Averill: Have you not been over that time and time again, that same letter, same matter? Mr. Weisman: No, this is the first time I have

been on this letter, Judge.

Examinet Averill: It is the same matter.

By Mr. Weisman.

Q. That was true, was it not? A. It does read that way; yes, sir.

Q. Not only does it read that way, but Mr. Reilly was setting forth the fact when he wrote that, was he not? A. That was his opinion, yes.

Q. Well— A. That was—

Q. -did you differ from him? A. No, I did not. .

Q. All right. A. What do you want me to have, his opinions? Those are his opinions. They are not mine; they are his.

Q. Well, I want to know whether your opinions are different from his opinions, and you have said they were not. A. No, I did not say that.

Q. Now, Mr. Reilly- A. No, I did not say that.

Q. Well— A. I may have different opinions from Mr. Reilly.

- Q. Have you, or have you not, on this matter? A. On many things, I have.
- Q. No, on this matter on this matter, did you have the same or a different opinion? A. I think we concurred.
- Q. That is all, then; say so. A. Then you should ask that way.
- Q. The letter further goes on and says: "It is agreed, owever, that the A.M.C. stores and the New York offices would gain tremendous prestige in the market if they were willing to be the first as a group to sign the F.O.G.A. agreement." A. That is right.
- Q. "The group therefore passed the attached resolution and asked that the matter be definitely decided one way or another at the executive meetings scheduled for next Wednesday, June 28.

Mr. Haycraft: You left out the word "committee."

-executive committee meet-Mr. Weisman: inge"; thank you.

By Mr. Weisman.

- Q. "-scheduled for next Wednesday, June 28," A. Yes.
- Q. That meeting of June 28 was held, was it not? A. Yes.
- Q. And it resulted in the passage of a resolution to sign Exhibit 88-A-

Mr. Albert: 88.

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By Mr. Weisman.

Q. -Respondents' Exhibit 88. A. At the executive committee meeting I think they resolved that this should be an individual store matter, but that they agreed that we should go along with the program, as I had explained it to them, and as it was understood, the exemptions, and all, included, and so forth.

A. Herbert L. Bergdahl-For Commission-Cross.

Q. Notwithstanding the fact that there was nothing in Mr. Reilly's letter about any of these exemptions? A. That is right, 'that is right, by—

Q. And notwithstanding the fact that you say you never wrote a single paper to any of your members advising them of this claimed exemption you are now telling us about? A. I while some of your exhibits show that there was an exemption.

Examiner Averill: But is not this resolution that you refer to the same resolution that is contained in Commission's Exhibit—or set forth—at least not contained, set forth in Commission's Exhibit 697, which I now see attached——

The Witness: Yes.

Examiner Averill: —to a letter, Commission's Exhibit 696?

Mr. Hayeraft: No, that is not it.

Mr. Haycraft: That is something that-

tion was prior to Mr. Really's letter, I believe, and subsequently the executive committee decided that this was to be an individual store matter, since a store would probably have to decide every consideration of its local conditions, whether or not it would sign up, whether its competitors equally decided, and so forth, all of those things came into it, and it was decided it was not an A.M.C. matter.

Mr. Weisman: I would like to have Commission's Exhibits 696 and 697 and 698.

Examiner Averill: I think they are there.

Mr. Martin: Do you want the originals?

Mr. Haycraft: 698 is not here; 696 and 697 are here.

Mr. Weisman: What is 696?

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Mr. Keller: 696 is-

Mr. Haycraft: . Here it is.

Mr. Weisman: Oh, have you got it there?

Mr. Haycraft: Yes (handing paper to Mr. Weis-

By Mr. Weisman.

Q. Mr. Bergdahl, as a matter of fact, you signed a declaration of co-operation personally, did you not? A. Yes, sir.

Q. When you signed it personally, that is, Respondents' Exhibit 88, you thought it important to put in your own handwriting the word "knowingly"? A. That is right.

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- Q. Was that also by an agreement with Mr. Rentner? A. I do not recall. "
- Q. But it was important? A. I'think it was discussed at the time.
- Q. Notwithstanding that, you did not think it was necessary to put in here any reference to an exemption? A. No, sir; I did not.
- Q. Did you have any idea in 1933 how many retailers were co-operating with the Guild? A. We were told from time to time by Mr. Rentner, and by members of the Guild, as I recall it.
- Q. I am now referring to about June, 1933. were told from time to time what the membership was of the Guild. I can't-I can't recall what it was in 1933. I believe that it at that time consisted—the membership consisted mostly of local Guild members, and that no declaration was signed until after this letter went out in June, 1933.

Q. Well, let me ask you this: Did you have any idea in 1933, June, about how many retailers had manifested a willingness to co-operate with the Guild in its program?

A. Did I have an idea?

- Q. Yes. A. I do not think that I did. I do not recall that I had an idea.
- Q. Was that not ever told you? A. I don't recall an figures being set of any number of retailers, no. I recall that—I do not recall that any number was set at that time
- Q. The Guild was just starting then, was it not? A No, it had not been—it had been in effect for some time
 - Q. About a year and a half? A. Yes.
- Q. It did not have its present strength, did it, in membership? A. No.
- Q. No, and it did not have, at that time, the number of co-operating retailers that you now believe it to have; it that not so? A. No, it did not.

- Let us see—in June, 1933, you were in more or les frequent communication with the members of the Guild or their executives, were you not? A. Yes, from time to time.
- Q. And they discussed with you what they believed to be their problems, did they not, with regard to the Guild A. Yes.
- Q. And, as a matter of fact, that was the time at which there were certain negotiations pending for you to become director of the Guild, instead of assistant director, of whatever you are, of the A.M.C., is that not so? A. Prio
- to June, yes.

 Q. Yes. So, and before—and those negotiations culm

- nated in the drawing of a proposed contract, is that no so? A. Yes, sir.
- Q. And before the contract was drawn you sought to advise yourself concerning the status of the Guild, divou not? A. Not particularly, no.
- Q. Well, did you not seek to find out how many menbers they had? A. I do not recall that I was intereste in how many retail members they had.
 - Q. No, I say- A. Manufacturing members.

- Q. I say, manufacturing members. A. We have no retail members.
 - Q. You have no retail members. A. All right.
- Q. When I say "members," I always mean manufacturing members. A. No, no. Maybe I can clean this all up. Did you have reference to the number of the manufacturing members the Guild had before?
 - Q. No. A. When you started this question?
- Q. No, I said retailers; I said retailers had manifested a desire to co-operate. A. I see. I did not know how many retail members they had.
- Q. No, no, that is not what I asked you. A: I do not recall that I sought to find out beyond what was on their stationery, how many members they had, manufacturing members.
- Q. And in all these discussions with Rentner and the other people with regard to you taking an agreement to work with or for the Guild for a period of years, you never asked them, in words or in substance, "Gentlemen, how many retailers have manifested a willingness to co-operate with you?" A. I don't recall that I did, Mr. Weisman.
 - Q. Let me ask you this -- A. I do not recall it.
- Q. The position of the Guild was a matter of common discussion in the dress markets, was it not, at that time?

 A. Yes.
- Q. And its number of members, and its co-operating retailers, the number thereof, was more or less in this market, bandied about, spoken of, was it not? A. The number of manufacturers were, but not the number of retailers at that time. The retail membership at that time did not come up for discussion at all, as I recall it.
- Q. Would you say that the retail membership at that time was very slim? A. I would say it was rather small, yes.
- Q. Would you say— A. The retailers who had signed any kind of agreements with the Guild.

Herbert L. Bergdahl-For Commission-Cross.

Q. Yes. A. Was small in number, yes.

Q. Yes. And you, on the other hand, your A.M.C., YOU have testified, they represented 1700 stores, did they not?

Mr. Haycraft: No.

A. The A.M.C. represented twenty stores.

By Mr. Weisman.

Q. Who represented the 1700 stores you told us about? A. The A.B.O., which was formed later in the year, was not yet formed at that time.

Q. Well, did you not tell us that this exemption was also to apply to the A.B.O. stores? A. Yes, I did.

Q. In other words, is it your statement—when was the A.B.O. formed? A. I think August of 1933.

Q. August of 1933? A, Yes.

Q. Then when the A.B.O. organization was formed, with nearly 1700 members, and your twenty-two-I will with draw that question. By the way, what is your opinion as to the volume of retail purchases in the ladies' ready to-wear, represented by the A.B.O.? A. I do not know.

Q. Well, you have given it as your opinion that your retail purchases in the ladies' ready-to-wear-when I say "your," I mean the A.M.C.—was about \$50,000,000 per annum, have you not? A. Total ready-to-wear, yes.

Q. Yes. Would you say that the A.B.O., with its 1700 stores, has a like volume of about fifty to sixty million? A. I would not know, but it might be much greater than that.

Q. Much greater. Would you say at least that? would not know.

Q. I had gathered the impression from you, perhaps erroneously, that you had stated on your direct testimony, that the exemption applied not alone to the A.M.C. stores but to the A.B.O. stores also? A. I did so state, as I recall it.

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- Q. Oh, then, I am—I wanted to know—I thought that you did, but I wanted to clear that up. So we then have this situation: You stated that all of your stores, your twenty stores, has this claimed exemption, and the 1700 stores of the A.B.O., if, as, and when they joined the Guild, they would have a like exemption; is that correct? A. That is right.
- Q. Do you know in June, or in August, rather, I will make that, instead of June, how many of these A.B.O. were already members of the Guild—were already cooperating with the Guild? A. Very few of them were.
- Q. Do you know whether or not, thereafter, substantially all of them were co-operating with the Guild? A. Yes.
- Q. You know that they all did co-operate with the Guild? A. They all signed declarations.
- Q. Of co-operation. And did they all sign declarations of co-operation, to your knowledge, or of those that came to your knowledge, were they substantially in the same form as Respondents' Exhibit 88? A. I believe so, yes.

Examiner Averill: Let me see that.

(Mr. Weisman hands Respondents' Exhibit 88 to the Trial Examiner.)

Examiner Averill: Do not wait on me; go ahead.

Mr. Weisman: All right.

Examiner Averill: I am just reading this.

By Mr. Weisman.

- · Q. When you got this exemption, did you tell it to your members? A. Yes, I did.
- Q. It was not secret, from stores like Filene's, or White's? A. No, it was not.
- Q. They knew all about it? A. Yes, they did.
- Q. As a matter of fact, do you not know that in 1933, 1934 and 1935, R. H. White & Company and Filene's were

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returning merchandise costing \$3.75 and \$4.75 and \$7.75, do you not know that? A. No, I do not, I know they may have done so.

- Q. I see. A. But it was not a general practice.
- Q. If they did that it comes as a surprise to you? A. No, it does not, not at all.
- Q. In other words, they had this exemption but they waived it? A. That is entirely possible. There was a desire—
 - Q. Yes. A. -to co-operate with the Guild.
 - Q. Yes. A. There was that definite desire.
- Q. Desire. And, as a result of that desire, this secret exemption concerning which you never wrote a letter to them, was waived by them? A. Not always, no.
- Q. Frequently? A. Up to 1935, there were very few returns, if any, and that was one reason why we went along so smoothly up to that time; it was after that that we got into trouble.
- Q. You mean, as soon as you were asked to live up to the declaration, then you no longer wanted to co-operate? A. No, sir; then we wanted to exercise our original agreement.
- Q. I see. A. As soon as we were asked to go along below \$10.
- Q. Well, let us see. This secret reservation concerning which you have testified— A. It was not secret. I said it was publicly arrived at. I do not say it was secret. Mr. Rentner wanted us to keep it.
- Q. If it was not secret, why was it not put into writing, some place? Why did you not put it in your own declaration, if it was not secret? A. I couldn't tell you. I wish I had known that, what I now know, and it would be in there, I can tell you that for a fact. It will never happen again—
- Q. Let us see— A.—any such trusting of people that I should not have any business of trusting, and it will never happen again.

- , Q. You say the A.M.C. is a trustful organization? A. I trusted Mr. Rentner, and I know other gentlemen that did, too.
- Q. You did tell R. H. White of Boston about that, did you not? A: I am quite sure that I did; yes, sir.
- Q. When? A. I am quite sure I told all of our stores about it. You mean about the exemption, is that what you mean?
 - Q About your private arrangement. A. Yes.
- Q. Extra signatories, and whatever you call it. A. Yes, I am quite sure we did.
- Q. Now, you know, do you not, that in 1933 White returned merchandise costing \$3.75? A. That is entirely possible, but I do not know it.
- Q. I say, you knew that J. L. Hudson returned merchandise below—at \$4.75, not below—just at \$4.75? A. It is entirely possible, but I am not aware of it.
- Q. You know, do you not, that Horn—that these stores that I am mentioning are all members of your A.M.C., are they not? A. Yes, they are.
- Q. You know that Horn returned merchandise below \$10.75 cost, do you not? A. No, I do not. It would not surprise me, if they had.
- Q. Well, do you know that Strawbridge & Clothier did?

 A. No, I did not.
- Q. Do you know Mr. Taylor of Strawbridge & Clothier?
- Q. Did not Mr. Taylor repeatedly write you prior to December, 1935, advising you that he was returning merchandise below \$10.75? A. Prior to 1935?
- Q. Yes. A. I believe the returns were so minimum that they did not come to my attention.
- Q. I do not ask you whether they were minimum or maximum. A. I do not recall that that came to my attention before 1935.

Q. Do you know that Filene's in the years 1933 to December, 1935, returned merchandise costing below \$10.75?

A. The same answer. I do not know, but it would not surprise me if they had. They were interested in furthering this program.

Q. Well, in other words, if these people returned merchandise all the way down to \$3.75 cost, your explanation thereof would be that they did it because they were interested in furthering the program of the Fashion Originators Guild; is that not so? A. I would say they were interested in co-operating.

Q. Yes. A. And furthering the program.

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Q. Well, they were going further than co-operating, they were doing something that co-operation in itself did not require; is that not so?

Examiner Averill: \Now

A. No. A

By Mr. Weisman.

Q. How?

Examiner Averill: There is a question there—I understood the declaration of co-operation was in writing.

Mr. Weisman : Yes, but he says— Do not take this on the record.

(There was a discussion off the record.) Examiner Averill: On the record.

By Mr. Weisman.

Q. These stores, by the way, are all stock companies, are they not? A. I do not—I could not tell you.

Q. Well, none of them are privately owned, are they? You know that. A. Yes, some of them are. You mean the ones you have mentioned?

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Q. The ones I have mentioned here as returning merchandise. A. Well, I am not sure about Horn's. I think the others are stock companies.

Q. Did the A.M.C. keep minutes of their meetings with reference to any executive action? A. Not the way

minutes are kept here, for example, no.
Q. No, but did they keep any written record? A. No, I would not say so, not of

Q. Well, let us see. A. -minutes were summarized by myself, as I have summarized to some extent by-

Q. And what happened to those summaries? A. Why, you have one of them.

Q. Which one do you say that I have? A. Oh, just-we were talking about one here, (witness refers to an exhibit); you had it in your hand here.

Q. You mean the Reilly letter? A. No, the resolution that was attached to it.

> Examiner Averill: The resolution? Mr. Weisman: The resolution.

By Mr. Weisman.

Q. Well, I do not mean that. A. Well, no other minutes were kept than just a resolution, or something like that.

Q. When you had a meeting with your various store executives, and a policy was determined upon, were there minutes kept of that? A. No, I cannot say that it was; resolutions were kept when they were passed.

Q. Well, aside from the resolution that has been produced here, were there any other resolutions passed by the executive of the A.M.C., or those represented by the A.M.C., with regard to this situation? A. I have looked through and I cannot find any, any resolution-

Q Well- A. -other than the ones that you havethis one here (referring to paper).

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Q. In other words, it is your opinion that during the three years—or, rather, four years, from 1932 to 1936, the sole and only resolution of the A.M.C. that you have been able to find, has been the one introduced here in evidence as Exhibit No.—

Mr. Albert: 695.

Mr. Weisman: -695.

Mr. Albert: Or 7.

Mr. Weisman: We better get it straight.

Examiner Averill: I thought it was 6, but maybe it is not. I think it is 697.

Mr. Weisman: 697.

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By Mr. Weisman.

Q. Is that your statement? A. Well, no, there may be others, but I looked through, and I have not found them now; in the last year there may be some resolutions, in 1935, I think, there might have been.

Q. Well, look—where did you look? A. Well, in my own file.

Q. Is there not a record somewhere in the A.M.C. where these papers are kept?

Examiner Averill: What you want to knowcloss he have a regular book?

Mr. Weisman: Yes.

Examiner Averill: Which is called a minute book?

The Witness: No, we do not:

Examiner Averill: In which he puts down-

The Witness: No, we do not; I said we do not. Examiner Averill: All right, that is all.

By Mr. Weisman.

Q. Do you have anything, other than the minute book, that you keep these records some place, loose-leaf, on

papers—have you got a record of what happens, or a transcript of what you mark down as happening in 1932, I would say? A. No, I have not.

Q. In 1933? A. I have put in evidence letters that I wrote to the stores, and those are the ones that I have. I have not any others.

Q. Well, was any kept, irrespective of whether— A. No, not that I know of—I really—I am not trying to get around your question. I do not know of any that were kept. I did not keep any.

Q. When you had-

Examiner Averill: We have been all over this. Mr. Weisman: All right.

Examiner Averill: And I must state that we cannot go over this again. It has been in here twice. Counsel for the Commission went into it, and you went into it in the early stages of this cross-examination, about these minutes, and he agreed to look, and he did, and he came back and he told you.

By Mr. Weisman.

Q. What is the name of the recording secretary of the A.M.C.? A. They haven't any recording secretary.

Q. Well, have you a girl, or a secretary, whose duty it is to keep records of action arrived at? A. We have a secretary, yes, of the corporation, Miss Brooks.

Q. Miss Brooks. Did you ask Miss Brooks whether she had any? A. Yes, I did.

Q. And what did she say to you? 'A. Well, I haven't gotten any from her.

Q. I did not ask you that. What did she say to you? A. She said she would look. I have not had a reply from her. I asked her to look carefully to see if there were any resolutions, or any of these things, at the beginning, or any

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other minutes, that she could find for me, and she has not found any for the months of— This was garment merchandise manager's discussion, not store discussion, and the garment merchandise managers' minutes I personally dictated, and they are not in the minutes, because I pinder stand it—mine was the contact with the Guild for the most part, and I had what I thought was an understanding, and there are no minutes to substantiate that, except the letters which I had put in evidence, which cover my understanding as I explained it to our stores.

Q. You have constantly referred to merchandise managers. Who is the merchandise manager of Filenes that you referred to when you say "merchandise manager".

A. I have referred to garment and general merchandise managers.

Q. Now, who is the garment manager, or garment merchandise manager, of Wm. Filene's & Son? A. Well, they have several, but Jess Drew is one who has been the most active, I think, in dresses, and items pertaining to this department, to this field of activity.

Q. Well, was he, Mr. Jess Drew, the one that was present at this meeting when you told them about this? A. I would not know. I am quite sure that he was. He generally is present at our garment merchandise meetings. I could not tell you without going to look it up to see whether he was actually there that day.

11394

- Q. Where would you look it up? A. To see if I could—when this resolution was passed, there was a copy of attendance attached to that, see?——
 - Q. Will you look? A. -of who was present.
- Q. Why did you not give that complete copy to the Commission, then, if you have it? A. I think I did. I think he looked through everything I have. I am not sure.
- Q. Have you got the list of attendance at the meeting where this resolution was passed?

Mr. Haycraft: I do not think-

Mr. Weisman: What? .

Mr. Haycraft: No, I have not got it.

Mr. Weisman: How?

Mr. Haycraft: Our investigator went in there and got everything, I suppose, that he thought was important.

By Mr. Weisman:

Q. Will you look up and see who was at that meeting?

A. I will.

Q. Mr. Bergdahl, you testified, did you not, that you had already communicated this exemption to the merchandise managers, or the garment merchandise managers, of your member stores? A. Yes.

Q. Did you not? A. Yes.

Q. Now, I want to know from you as to each store, the name of the man to whom you communicated the information? A. Yes.

Q. To the best of your recollection? A. Yes.

Examiner Averill: Now, wait a moment,

Mr. Weisman: Yes.

Examiner Averill: Mr. Bergdahl, when this information was communicated, it was not meets sarily communicated at one meeting, because, as I understood, all of your members were not present at one meeting?

The Witness: That is right, conversations-:

Examiner Averill: As I understand it, at various meetings you communicated and told these people orally your understanding as to this exemption—

The Witness: That is right.

Examiner Averill: —which you had with officials of the F.O.G.A.?

11396

The Witness: Yes.

Examiner Averill: But I did not understand you to testify that all of these managers were present at any one meeting?

The Witness: No, I did not mean to convey that; if I did, and I——

Examiner Avefill: I understand.

Mr. Weisman: All right.

Examiner Averill: Now, it would be almost impossible for him to answer that question and say who was present at the different times.

Mr. Weisman: No, I do not ask him who was present. I asked him to whom he communicated.

Examiner Averill; —or to whom he communicated.

Mr. Weisman: But I am-

The Witness: I said to you, Judge, our stores, the garment merchandise men of all of our stores.

Mr. Weisman: Yes.

The Witness: And in some cases the general merchandise men.

By Mr. Weisman.

Q. In Filenes, you said your recollection was that you communicated it to Mr. Drew? A. Yes.

Q. Yes. A. And I think Mr. Wright, but Mr. Drew primarily.

Q. And to Mr. Wright? A. Yes.

Q. Did you communicate it to Mr. Wright, or did you not? A. I told you "I think," "I think."

Q. All right. Now, as to R. H. White, who do you say that you communicated it to? A. I do not recall who is the general merchandise manager at White's at that time. They have had three or four in the last four years, and I am not sure whether it was—whether it was a Mr.——

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By Mr.

He

Q. T. stores, think t

Q. N Was it you con Q. P

mercha stores, A. Yes

Q. N munica Q. N

munica ager th

Q. A

Q. A Howd.

Q. A.

Examiner Averill: if e is not going to any paricular time. He is going down through the whole period from the time the so-called reservations were nade.

Mr. Weisman: Yes.

Examiner Averill: Down to the end of the chaper: so that you have no specific meeting—

Mr. Weisman (interposing): Wait a moment. Wait a moment. I thought we had fixed some lates, but any time.

Examiner Averill: You cannot fix dates for those kind of things. That is my point. Unless you have papers.

11402

Weisman.

hese declarations of co-operations, by your member were all signed, were they not, in 1933? A. Yes, I hey were.

ow, prior to the signature—I will withdraw that. prior to their signing or after their signing that municated the exemption to them? A. Prior.

rior. So that in 1933 you communicated to the ndise managers, or the managers of your member the exemption that you believed you had obtained?

ow, as to Abraham & Straus, Inc., who did you comte that to? A. I think George Ladd, I am not sure. ow, as to L. S. Ayres & Company, who did you comte that to? A. I believe Cle Herman was the manere at the time.

s to Bloomingdale's, who did you communicate that Walter Denches.

s to Bullock's, Los Angeles? A. I think O. B.

s to H. C. Capwell Company? A. Probably Mr.

- Q. As to the Dayton Company? A. Mr. Donovan and Mr. Phillips, I believe.
 - Q. As to the Emporium? A. Mr. Millburn.
- Q. As to B. Forman? A. Mr. B. Forman and Eddie Forman, I think.
 - Q. As to Joseph Horn Company? A. Mr. Gutsche.
 - Q. As to J. L. Hudson Company? A. Mr. Sappington.
- Q. As to Hutzler Brothers Company? A. Charlie Hutzler.
- Q. As to F. & R. Lazarus Company? A. Lee Davis.
- Q. As to the Reich-Cumler Company? A. I believe Paul Lundgren was there at the time; I am not sure now whether he was or not.
- Q. As to the John Shillito Company? A. That—I do not—I have forgotten his name.
- Q. But you could easily ascertain, could you not? A. Yes, I think I could.
 - Q. As to Stix, Baer & Fuller? A. That was Lieberman.
- Q. As to Strawbridge & Clothier? A. I think that was Mr. Alderfoer at the fine.
- Q. As to William Taylor & Sons? A. Earl Miller, I believe, and probably Mr. Roth.
- Q. As to the Boston Store? A. They were not members at the time, as I recall it.
- Q. So you did not tell them? A. I am not sure whether they came in that year or not; I cannot recall exactly.
- Q. Yes. Now, before you testified, did you speak with the examiner that the Commission sent to interview you? A. Why, yes, we spoke to them, members of the Commission.
- Q. Did you tell him that you had conveyed this information to these people you have just mentioned? A. No, I do not recall that they asked me that.
 - Q. And you did not volunteer it? A. No.
- Q. Before you saw him, did you speak to—before you saw this examiner, did you speak to Mr. Fox? A. Before I saw this examiner?

Q. You did testify that you aided and assisted in the proposed resolution that was to go into the code of fair competition for the dress industry with regard to style piracy? A. Yes, sir.

Q. You know, do you not, that that resolution was ulti-

mately framed? A. It was.

Q. And as so ultimately framed it had no price differential or exclusions or exemptions in it, had it not? A.

That is right.

- Q. Mr. Bergdahl, do you know whether or not, or, have you any recollection on the subject of whether or not under the proposed resolution which was to become a part of the code of fair competition for the dress industry, such provision was in words or in substance, "style piracy is declared to be an unfair trade practice"? A. I think that was the intent of the wording to that effect that was to be in there. The intent was to make it an unfair trade practice by and if that clause was to be adopted, it would then be unfair.
- Q. You think it was not unfair before then? A. Well, no, before, no laws or anything that I know of that made it unfair.
- Q. Well, that is certainly a surprise. What about the ethics of it? What do you think about that? A. I do not think that such ethics as the industry originated in, and had grown from the beginning, when you consider that I do not think it could be considered entirely unfair when they all theretofore had done so.
- Q. In other words, you think it is a proper thing for this industry to continue the stealing, theft, and immoral seizare of original designs from others which we know by the term "style piracy"? A. Well, I think that—
- Q. "Yes" or "no." Do you think it is proper? A. I cannot answer that "yes" or "no."

Q. All right.

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Examiner Averill: Is that the question complete?

Mr. Weisman: Well, I will make it complete.

By Mr. Weisman.

Q. In other words, you think it is a proper thing for this industry to continue the rambant practice of style piracy, as you understand it to be? A. As to that, I think——

Q. As to that you can certainly answer that "yes" of "no" do you think it is proper. A. No, I cannot answer that "yes" or "no."

11411

Examiner Averill: I do not think he can answer that "yes" or "no" with the word "rampant" in it, That might mean one thing to him and one thing to you.

Mr. Weisman: All right.

By Mr. Weisman.

Q. The Judge is holding with you so you had better try to carry along under his wing as far as you can before you get out in the open.

Mr. Haycraft: I object.

Mr. Weisman: Undoubtedly.

11419 By Mr. Weisman.

Q. Have you got different ideas on the subject of style piracy new from what you had in 1933? A. Yes, sir.

Q. In other words, I take it that in 1933 you felt that style piracy was wrong and unethical and just plain ordinary stealing? A. I felt that copying, and if you want to call it "style piracy," was—I felt that it had its bad points.

Q. And it had its good points? A. I did not say so.

Q. Well, it had no good points?

Examiner Averill: Let the witness tell what he thinks about it.

Mr. Weisman: He does not seem very anxious to do so.

A. I felt that there were disadvantages, I thought, and at the time I felt they were there, and I sincerely tried to overcome those by my attitude and by my efforts at that time.

By Mr. Weisman.

Q. And it is your opinion, then, to day, I take it that no effort should be made in this industry to curb style piracy, or to eliminate it? A. Well, I have come to some very definite—I have come to have some very definite ideas that are quite contrary to what I had at that time, though they do not differ entirely with those, but they are quite to the contrary.

Q. Now, Mr. Bergdahl, you went along in 1933, 1934, and co-operated with the Guild? A. Yes, sir.

Q. And at that time, that is, in 1933 and 1934 and the early part of 1935, there were few, if any, \$10.75 and below wholesale cost, manufacturers in the Guild? A. With the exception of the sportswear group.

Q. Did you not feel that that was, at any time, a short-coming of the Guild that ought to be remedied? A. From the Guild's point of view I did.

Q. Look, did you not at one time in 1935, in the early part, either by letter or by word of mouth, say in words or in substance to Mr. Rentner that you felt that, representing your stores, that the Guild should extend its program by taking into its membership manufacturers at \$10.50 or \$10.75 dresses? A. I did not say that, no. I had conversations about this thing with Mr. Post and Mr. Rentner.

11414

- Q. Did you ever write any letters on the subject? A. I do not think I ever did except those letters that are in evidence here.
- Q. No, I am not referring to them. I mean, aside from those letters? A. No, I do not think I did, Mr. Rentner.
 - Q. I am Mr. Weisman. A. I said Mr. Weisman.
- Q. Did you ever say or write to Mr. Rentner, or to Mr. Post in or about the end of 1935, in the early part of that year: "This program may be all right for Adam Gimbel, but for our stores, if you want to make it fair you ought to take in \$10.75 dress manufacturers." Does that cause you any glimmer of recollection? A. No, not in that substance, no.

- Q. Do you remember the conversation? A. Yes, sir.
- Q. Wherein you said or referred to one "Adam Gimbel"? A. Yes, sir.
- Q. When you referred to one "Adam Gimbel," you were not referring to a person but you were referring to the executive head of Saks, Fifth Avenue Store? A. To the type of store, yes.
- Q. To the type of store rather than to him as an individual? A. Yes.
 - Q. And the type of store, such as it was? A. Yes.

Examiner Averill: That is Saks, Fifth Avenue?

Mr. Weisman: Yes. For your Honor's information, Gimbel's own Saks.

Examiner Averill: Proceed.

11418

By Mr. Weisman.

- Q. That conversation, when was it, according to pour recollection, that it was held now that we have identified in this record? A. In the spring of 1935.
 - Q. In the spring of 1935? A. Yes.
- Q. Did you not in that conversation, say in words or in substance that the Guild program, as it then was with

the manufacturers' membership where it had appeared to be all right for Adam Gimbel, and the business of the Saks Fifth Avenue Store, and stores of that category—A. Yes, I said that as it was then constituted with the manufacturers then members of it, that it appeared to be all right for Adam Gimbel and the business that he was conducting at the Saks Fifth Avenue.

Q. Now, we have that pinned down. Did you not also say, in words or substance, that in order that it should not be unfairly all right for them as against your stores which had a wider price range, that the wild ought to, or should, take into its membership manufacturers at or below \$10.50? A. Of what?

Q. Merchandise. A. That is not what I recall what I said to him, it was not what I said to him as I recollect it.

Q. Tell us to the best of your recollection what you said. A. One day in Mr. Post's office discussing this subject, I said to Mr. Post after he had—after—I believe—I believe it was after the time when I saw that little announcement in the paper, I thought if you were to take in \$10.75, why did you not return the original declarations to all of your members, and send them new agreements which would cover this group of manufacturers and Mr. Post or Mr. Rentner also told me subsequently that that—that they did not want to do that, since their retailers or many retailers in the membership were not questioning the original contract, or what it pertained to, and that they could take in other manufacturers and price lines without consulting those original signers.

Q. Look, Mr. Bergdahl- A. Yes.

Q. No, no, will you please not look at me? A. Yes, sure.

Q. Is it your statement here now, and please consider this carefully, that you did not discuss with Mr. Rentner or Mr. Post, before any announcement with regard thereto appeared in the paper, the taking into membership of the

11420

Guild of manufacturers at \$10.50 or \$10.75, making merchandise in those wholesale price lines? A. Yes, we did, and I think subsequently it is in the minutes of the meeting of May 4, the May 4 meeting, and it is also in the minutes that you wanted the \$10.75 manufacturers taken in. Those letters are in evidence. I did not answer your old question before regarding Adam Gimbel, and if you want me to say further about that, I can, or if you want to stop, O.K.

Q. I want to get this plain because you gave me a contrary impression a moment ago. A. O.K.

Q. Is it not a fact that before the \$10.75 or the \$10.50 manufacturers were admitted to the Guild, the matter of their admission, or non-admission, was fully discussed with you, and with Mr. Block of Kirby, Block & Fischer, who, I think, was then president of the A.B.O.? A. It was fully discussed but we did not ask the Guild, and I do not recall that I asked the Guild to take in the \$10.75 manufacturers, but the subject was discussed.

Q. It was full discussed? A. Yes, it was fully discussed.

Q. After it was fully discussed, and after the Guild had made up its mind to take in these \$10.50 or \$10.75 manufacturers, that determination was conveyed to you by the Guild officers, was it not? A. It was; yes, sir.

Q. After it was conveyed to you by the Guild officers, you sought to lend your aid to the Guild in getting these manufacturers to join the Guild? A. No.

Q. No? A. No.

Mr. Weisman: Well, I think this is a good place to adjourn.

The Witness: No, you are speaking about \$10.75 manufacturers.

11423

By Mr. Weisman.

Q. \$10.50. A. My answer was I did not.

(Whereupon, at 1.10 o'clock P. M., December 1, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway, New York, N. Y., December 3, 1936.

Met, pursuant to adjournment, 10 A. M. E.S.T.

11426

Before: EDWARD M. AVERILL, Examiner.

(SAME APPEARANCES:)

By Mr. Weisman.

Q. When we last adjourned, Mr. Bergdahl, I believe that I had asked you, in words or substance, whether or not prior to the admission in 1935 into membership of the Guild by certain \$.0.50 or \$10.75 manufacturers, you had lent your aid in bringing about the admission of such members to the Guild, and I believe that you had said 'no." A. That is right.

- Q. Well, tell me at that time, not to-day, or at any time subsequent, but at or about that time, of the admission of those members—was that matter not discussed with you and other representatives of retailers in your presence, by members of the Guild? A. Yes.
- Q. And without seeking to give the exact words or substance—I will withdraw that. Without seeking to give the

exact words, but in an effort to paint for us the substance of what was then going on, would you not say that at that time it was generally felt that it would be for the benefit of all parties to bring into the Guild the \$10.75 members?

Mr. Haycraft: By whom?

Mr. Weisman: By all those who were there present. I think that is fairly understood in the question.

The Witness: No, it was not, just in that-in the way you have stated it.

By Mr. Weisman.

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- Q. Well, I did not—let me try to get it to you in a different way: We will first come to you. Had you not, for some time prior thereto, felt that for the benefit of your stores getting, shall we say equal, or the ultimate protection out of this program of the Guild, that it might be well to take in the \$10.75 members? A. No, sir.
- Q. Did you not reel at any time that something ought to be done to protect lower-priced goods—that is, goods lower than \$16.75? A. Not prior to the fall of 1935.
- Q. I see. Well, let me see, did you not feel that where-generally, I mean, I am not trying to give your exact position—did you not feel prior to the fall of 1935 that where a store of yours—when I say "of yours," I mean that you represented—had originals in \$16.75 cost, and competing stores were showing copies of that \$16.75 and \$5.75 merchandise, or \$4.75, or \$6.75, or \$10.75, that the Guild ought to do something about that situation? A. No, I did not.

- Q. You did not? A. I did not think the Guild should, prior to the fall of 1935.
- Q. You are giving us your best recollection? A. Certainly.
- Q. I show you this paper and ask you whether or not that is your signature (handing paper to witness)? A. It is.

- Q. Now, I ask you whether or not on October 19, 1934, you wrote that letter to the Fashion Originators Guild? A. I did.
- Q. And I ask you whether or not this was the advertisement contained, referred to in that letter, which you enclosed? A. That is right.

Examiner Averill: No, no, you have not identified the exhibit.

Mr. Weisman: Excuse me; thank you.

(A paper was thereupon marked for identification Respondents' Exhibit 89.)

Examiner Averill: You will save a lot of time 11432 by doing so.

Mr. Weisman: I now offer the letter of October 19, 1934, on the letterhead of the Associated Merchandising Corporation, signed by H. O. Bergdahl, this witness, in evidence, as Respondents' Exhibit 89.

Examiner Averill: Show it to Mr. Haycraft. Mr. Weisman: Yes.

(Mr. Weisman hands paper marked Respondents' Exhibit 89 to Mr. Haycraft.)

Mr. Haycraft: Where is the advertisement?

Mr. Weisman: Here it is.

Examiner Averill: Go on and show it to him.

Mr. Weisman: You may see it, no secret about anything in this case.

Examiner Averill: No, especially not an advertisement.

(Mr. Weisman hands newspaper advertisement to Mr. Haycraft.)

Mr. Haycraft: No objection.

Examiner Averill: The paper heretofore shown the witness; which he identified as being the letter

written by himself to Mr. J. M. Golby, F.O.G.A., New York City; bearing date October 19, 1934, will be received in evidence and marked Respondents Exhibit 89, with leave to substitute a photostatic copy in lieu thereof.

(The paper heretofore marked for identification Respondents' Exhibit 89, was marked as an exhibit and received in evidence.)

(A newspaper was marked for identification Respondents' Exhibit 90.)

By Mr. Weisman.

Q. Now, I show you Respondents' Exhibit 90 for Identification and ask you whether or not when you referred to the attached advertisement in Respondents' Exhibit 89, this is the attached advertisement which was attached by you to that letter? A. Yes, it is.

Mr. Weisman: I now offer this in evidence. I have already shown it to Mr. Haycraft, and he says he has no objection.

Examiner Averill: There being no objection, gentlemen, the paper heretofore marked Respondents' Exhibit 90, the same being an advertisement from the San Francisco "Shopping News," bearing date October 15, 1934, will be received in evidence, with leave to substitute a photostatic copy in lieu thereof.

(The paper heretofore marked for identification Respondents' Exhibit 90, was marked as an exhibit and received in evidence.)

By Mr. Weisman.

Q. In this letter, Respondents' Exhibit 89, which was written on October 19, 1934, you enclosed the advertise

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ment, Respondents' Exhibit 90, and you say there, "The attached is the advertisement to which I referred to in my conversation with you over the telephone this morning." Now, I take it that you meant so much of this advertisement as refers to new fall dresses, \$6, all copies of higher-priced dresses? A. That is right.

Q. Is that so? A. Yes.

- Q. And in that letter which was written on October 19, 1934, you wrote, did you not, at that time: "However, the Guild must do something to correct this situation." A. That is right.
- Q. And the situation that you were therein referring to was that at prices therein shown at \$6, there were being offered copies of merchandise of \$16.50 or \$16.75, and up; is that not so? A. Something like that.
- Q. Yes. A. I recall that the word "copies" is what aggravated our store particularly.
- Q. Yes. All right. A. I think the letter also shows-

Mr. Weisman: Now, just a moment. I have no further questions.

The Witness (continuing): —that there was not any exemption—

Mr. Weisman: Just a moment, just a moment.

Examiner Averill: 'The letter is there.

Mr. Weisman: Yes, the letter is there.

The Witness: O.K.

By Mr. Weisman.

- Q. In 1935, in or about July, there was admitted into membership of the Guild a number of \$10.50 manufacturers? A. As I recall; yes, sir.
- Q. Subsequently, there were taken into the Guild, I understand, even lower-priced manufacturers; is that true? A. Yes

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Q. As to these lower-priced manufacturers, before the were taken into the Guild, the advisability of their admission into the Guild was discussed with you, as a representative of various retailers? A. Yes, sir.

Q. And before these members were taken into the Guil you took it upon yourself, in good faith, to appear before a large and representative body of such manufacturer and urged them to join the Guild, did you not?

Mr. Haycraft: I object to the form of the que tion.

Examiner Averill: Objection overruled.

11441 . A. Yes. I think you can put it that way.

By Mr. Weisman.

Q. Not the way I want to put it—is that true? A. The is true.

Q. And before you did that there was, was there not, mutual understanding arrived at, to which understanding you were a party, that after the admission of these \$6.7 manufacturing members into the Guild the co-operation that would be desired from the retail stores would be

more careful or more stringent one; is that so? A. Ye sir.

Q. Thereafter, these \$6.75 members were admitted in the Guild? A. Yes.

Q. And I understood you to say on your direct examin

Guild did require a more strict compliance with their de laration of co-operation? A. In substance.

Q. And, as a matter of fact, you felt that that did no work out so well? A. I did.

tion that after the admission of these \$6.75 members'th

Q. Then, I understood you to testify that you spoke to some of the executives of the Guild, giving them you opinion? At what time?

- Q. After the admission of the \$6.75 manufacturing members into the Guild? A. Yes. We had talks.
- Q. And they then told you in words or substance that as time went on they would expect this program of co-operation to become more and more literal; is that so? A. Yes, sir.
- Q. Did they not at that time tell you that it was their opinion, whether it was a fact or not, that only by a more and more literal adherence to this program could design piracy ultimately be stamped out? A. Yes.

Q. And did they not, as a matter of fact, say to you in words or substance that unless this design piracy were stopped, or overcome, that they would have to go out of business themselves, or, to use your own words, that they would have to shut down? A. To use my words?

Q. I think those are your words that you used. Well, never mind, whether they are your words or not, is that not the substance of it? A. I think that is the substance, if they did not include the lower priced lines that it would work poorly; that it would not work so well.

Q. Mr. Bergdahl, in or about this time—that is, the latter part of 1935, and I think it was in or about November, or thereabouts, or earlier—you suggested to the Guild that the Guild adopt a different method of adjudging style piracy; did you not? A. Yes, sir.

Q. And you suggested to the Guild that the Guild, instead of having its members take a hand in the adjudging of style piracy, that the Guild permit that whether or not a dress shall be admitted and deemed a copy of an origination should be determined by representatives of retailers rather than by representatives of manufacturers? A. I did.

- Q. And the Guild adopted your suggestion? A. They
- Q. Mr. Bergdahl, in connection with that suggestion, do you know whether or not— A. What is that?

11444

- Q. I will drop that for the moment. Did you not know that the Guild, in an effort to make such adjudgment impartial, chose a panel of retailers that were to sit or a certain day one week in advance of the day that the were to sit? A. I did not know that.
- Q. Let us see whether or not we can refresh your recol lection. A. O.K.
 - Q. You served on some of these panels? A. Yes, sir.
- Q. Did you not always obtain notice a week in advance that on a certain day you were to be asked about-or, rather, to be exact, you were asked to serve on the retail committee? A. I do not recall that,
- 11447
- Q. Were you not ever told, in words or substance, or did you not ever learn that the Guild in an effort to erradicate any charge of favoritism, or lack of impartiality in such judging, adopted the program as you suggested, but added thereto the following: "That the committee that is to sit on a certain day shall be and is to be designated one week in advance and at a time when it is not yet known what shall come before that committee"? A. No.

Mr. Haycraft: I object to the form of the question.

Examiner Averill: Overruled. He has answered that he does not know.

A. I do not recall that I learned any such thing.

11448

By Mr. Weisman.

Q. Were you ever told, in words or substance, or did you learn in any other way, that the Guild, further in its efforts to comply with your suggestion and to render this procedure free from any claimed favoritism, or lack of impartiality, passed a resolution by which it provided that none of the Guild members might appeal from such rulings as should be made by such retail committee, but that any person or manufacturer, not a member of the Guild, had a right of appeal?

Mr. Haycraft: I object to the form of the question as to what was in the mind of the Guild. How can he possibly know what was in the mind of the Guild.

Mr. Weisman: I asked him if he Pearned that. I am only asking him for what he learned.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: Objection overruled.

By Mr. Weisman.

11450

Q. Can you answer the question? A. The question is so long I do not really recall it now.

'Q. I will ask that it be read to you. A. Thank you.

Mr. Weisman: I ask that the question be read. Examiner Averill: The question may be read.

Q. (Question again read.) A. I did not learn that, and do not believe it worked out in practice if they did pass such a resolution.

Mr. Weisman: May I have the latter part of the .o

Mr. Haycraft: I think it is properly a part of the answer.

Examiner Averill: No, no, motion granted, The part of the answer which is allowed to remain is, "I did not learn that." The remainder is stricken out.

11451

By Mr. Weisman.

Q. Did you not further learn that in connection with the hearings that were to be held by this retail committee which was to judge whether a dress was a pirated copy or

not, the Guild resolution provided that if the manufacturer was a Guild manufacturer he had to be content with the personnel of the committee, but if the manufacturer was not a Guild manufacturer, was called before the committee, he had a right, with or without cause, to object to the personnel of the committee in which event an entirely new and subsequent committee which had been appointed for the following day would sit? A. I heard something to that effect.

Q. Did you further hear that the Guild further provided that if the subsequent committee with or without cause was unsatisfactory to the non-Guild manufacturer. that then the non-Guild manufacturer could ask that the matter proceed to arbitration pursuant to the laws of the State of New York, to wit: That the Guild manufacturer would appoint one representative or arbiter; the non-Guild manufacturer would appoint one, and the two would appoint a third, and the three would, the three so designated, would constitute the board of arbitration, whose decision would be binding? A. I did not know that.

Q. You did not know that? A. No.

Q. If you had known that, or if you had known of the entire procedure as I have now outlined it, commencing with my first question with regard thereto, do you not think that that was as reasonably fair as human endeavor. could devise to adjudge this situation? A. Yes.

· Q. Mr. Bergdahl, on your direct examination you were asked in words or substance whether or not you ever knew of a decision on design piracy being subsequently changed, and I believe you said you know of one such instance. A. I recall it—as I recall it, I said so.

Q. You did not tell us through what mechanics that decision was changed? A. No.

Q. Do you know how it was changed, or through what mechanics it was changed? A. I have a version of it.

11453

- Q. Let us see. You remember on one occasion that a dress was adjudged a copy. Will this refresh your recollection that the initial committee adjudging a copy in connection with the dress that was made by the Puritan Dress Company—does that bring any recollection to you? A. I do have some recollection of the Boston case.
- Q. Yes, Boston was where the Puritan Dress Company was located? A. Yes.
- Q. As I understand it, you called up and you told Mr. Golby, or Goldston, of the Guild, that you thought the decision of the committee was unfair; did you not say that in words or in substance? A. Well, yes, but I want to make it clear that I did not testify about the Puritan case in my direct testimony. There is no reference to that in my direct testimony, as I recall it. It was not——

11456

- Q. But what case did you have reference to? A. I think I had reference to the case of Emanuel versus somebody else, I forget who it was, Emanuel Gowns, before they were members of the Guild.
- Q. Mr. Bergdahl, there is no desire on my part to have you make a mistake. I say to you that I am quite certain that there was no change of decision at any time with regard to Emanuel Gowns, and the records will so show. Now, I want to see if that will not refresh your recollection. There was a change after a conversation between you and Mr. Goldston with regard to a firm in Boston. As a matter of fact, Emanuel Gowns, as you must know, are not in Boston, so they could not have been the concern you have in mind, could they? A. Mr. Weisman, I said Emanuel Gowns, and that is what I mean. I think that that Puritan case was another case in which there was some dispute, but there definitely also was one at the Guild offices in connection with the Emanuel Gowns, I believe, and somebody else.

11457

Q. I am not talking— (Mr. Weisman confers with Mr. Post) Look, we will have to start at the beginning. I

want to clear this up. On your direct examination, Mr. Haycraft asked you whether or not you knew of a case where a decision of the piracy committee was subsequently changed, and you said you only had heard of one such case. Is that correct? A. I recall of one such case.

Q. Yes. Now, what was the one such case that you recall? A. I had reference to a piracy committee action in connection with Emanuel Gowns copying somebody in the Guild.

Q. And the original piracy committee determined that Emanuel Gowns had copied. A. The decision of the piracy committee was that the dress was not a copy.

Q. Yes. A. Then as a result of conference, or as a result of some discussion with officials of the Guild, including Mr. Post, I believe, and possibly the manufacturer in the Guild, the committee changed its decision to one that it was a copy. At first the same committee—

Q. How do you know about that? A. My buyer was on the committee and so judged—so reported to me—

Q. Let me read your testimony. A. —and subsequently I talked to Mr. Goldston about it.

Q. Let me read your testimony and see whether or not you were not in error when you testified as follows, or whether or not you are in error now.

Mr. Haycraft: What page?

Mr. Weisman: 6740. Will your Honor follow this testimony, listen to what was said on the direct testimony of this witness?

Mr. Martin: Where?

Mr. Weisman: At the bottom of the page. Are you following me?

Mr. Martin: No.

Mr. Weisman: I will read it carefully. (Reading.) "Q. In what instance was that? A. It was in connection with some dress company versus

11459

somebody else; I do not think of the name just now. This particular Guild member—that was before they became members of the Guild, and it was a case in which a given committee went the other way and in which one of our buyers was a member, and the committee made the decision that the dress was a copy."

A. That is right. The second time they did.

Mr. Weisman: Wait a moment, now. Wait a moment.

Examiner Averill: Hold on.

Mr. Weisman: That is the point, you said the 11462 second time, and a minute ago it was the first.

The Witness: I---

Mr. Weisman (reading): "The manufacturer brought it to my attention, or, at least, it came to my attention, and I called up Jack Goldston, and I said, 'Jack, in your own honest opinion, is that a copy of the dress in question?' And he said, 'Well, frankly, I do not think it is.' I said, 'Very well, why do you send it out as a copy, then?" He said, Well, I do not know, but that is the decision of the committee.' I said, Well, you had better see. that that is changed because obviously this is unfair, and I am going to make ar issue of it because it is not right. I think as the result of that there was some change in the decision. However, prior to that when the committee was in action they made two different decisions on that particular dress, which was subsequently brought to my attention."

The Witness: That is right. Mr. Weisman: All right.

The Witness: So it is in there.

11466

Mr. Weisman: I mean, the two versions can stand one against the other.

Examiner Averill: There isn't any contradiction.

Mr. Weisman: Oh, I think in my brief, your Honor, I will point out clearly that there is a contradiction.

Examiner Averill: Let us go ahead. Mr. Weisman: All right.

By Mr. Weisman.

- Q. As a matter of fact, now, do you not know that after you spoke to Mr. Goldston, and as a result of your conversation with Mr. Goldston, he said to you that if any retailer, or any manufacturer, were dissatisfied with the finding of this committee, an appeal could be taken, and that appeal was taken because of your expressed dissatisfaction, and a separate committee appointed, and then the change of decision came through the appellate committee? A. Do I recall all that?
 - Q. Do you not know that? A. No, sir.
- Q. Substantially? A. No, sir; I do not, substantially or otherwise.
- Q. All right. Did you ever hear of a meeting between members of executives of the Fashion Originators Guild, Mr. Reilly, Mr. Schapp, and others, in the early part of February, 1936, at the Union League Club? A. Yes.

Q. And that was before anybody was red carded, was it not? A. I am not sure.

- Q. Well— A. I think some had been red carded at that time, four or five stores.
- Q. Well, you only think so. A. No, I am quite sure about it.
- Q. When did you first find out of the A.M.C.'s being-certain of the stores of the A.M.C. being red carded? A. On or about February 10, I believe.

Examiner Averill: 1933, 1934?

The Witness: 1936.

Examiner Averill: 1936?

Mr. Weisman: 1936.

The Witness: February 10, 1936.

By Mr. Weisman.

Q. Did Mr. Reilly, your superior, tell you that he had a meeting at the Union League Club at which Mr. Post was present? A. Yes.

Q. And that at that meeting among others who were present was Mr. Schapp, of Bloomingdale's, Mr. Reardon, of Stern's Department Store, Mr. Petrie of James McCreery, and others; do you remember that. A. He told me of such a meeting.

11468

- Q. That meeting was in the early part of February, was it not? A. Yes.
- Q. There is no doubt, now, in your mind that that meeting was prior to the time that Bloomingdale's was red carded? A: I am not sure about that; I am not sure about it. It seems to me that Bloomingdale's were red carded at the time of that meeting, and Mr. Reilly said that there was some discussio: about Bloomingdale's red carding at that meeting. However, I may be wrong.
- Q. Let me see. As a matter of fact, did not Mr. Reilly advise you that at that meeting of the Union League Club, he said, in words or substance, that speaking—that he and. Mr. Schapp said that speaking for the A.M.C. stores, or speaking for the A.M.C. stores, that they would not co-sperate under any circumstances? A. No, he did not tell me that.

- Q. Let us see. A. He had just issued a letter in which he said—or, no, that is right.
- Q. Let us see whether this will refresh your recollection, now. You remember the letter— What is the number of that letter that went out, that came to us?

The Witness: February 14.

Mr. Weisman: I want to get the exhibit number, the letter of February 14.

Examiner Averill: Who from, too?

Mr. Weisman: It is a letter from the A.M.C. to the—

The Witness: To the Guild.

Mr. Weisman: -to the Guild.

The Witness: Fashion Originators Guild.

Mr. Weisman: Advising us that their members would not co-operate, or something to that effect. I do not know what it was.

The Witness: That is not what they advised you, and you know it.

Mr. Weisman: Listen. I know if you do not keep still when I am addressing the Court, I am going to move to have you cited for contempt, that I know.

The Witness: You are not going to quote me otherwise than what I have said.

Mr. Weisman: I am not quoting you.

Examiner Averill: Gentlemen

Mr. Weisman: All I want you to do is to keep still.

Examiner Averill: Stop this, now.

Mr. Weisman: I mean, the witness has no right—it is bad enough if counsel constantly interrupts.

Examiner Averill: Gentlemen, I am not going to listen to any more of this. This is nonsense. Please, Mr. Bergdahl, do not make remarks of that sort. It does not do any good, and that ought not to go on the record, and the witness and counsel should not argue at all.

Mr. Feldman: Certainly does not help your testimony any; it hurts it.

Examiner Averill: Off the record.

6. 11471.

(There was a discussion off the record.)

The Witness: Your Honor, may I ask for information, something off the record?

Examiner Averill: Off the record, yes.

(There was further discussion off the record.)

Examiner Averill: On the record.

Mr. Haycraft: Here is the letter, Respondents' Exhibit 37.

Examiner Averill: All right. Mr. Weisman: Let me see it.

Examiner Averill: I will read it. Not for the record.

(There was a discussion off the record.)

Examiner Averill: On the record.

11474

By Mr. Weisman.

Q. You remember, do you not, that you knew that prior to Mr. Reilly's attendance at that Union Club meeting Respondents' Exhibit 37 had not been sent? A. I think it had not been sent, but I am not positive about the date.

Q. I do not ask you—at the Union meeting— A. I am not exactly positive, Mr. Weisman.

Q. Do you not know as a matter of fact, and did not Mr. Reilly tell you, that he took with him to that Union League meeting a copy of this letter? A. I do not recall that he told me, no.

Q. Did he never tell you that at that Union League meeting he advised, in words or substance, Mr. Post that they would not co-operate with the Guild on its program as it then was? A. I think that he did say that, yes.

Q. And- A. -as it then was.

Q. Yes. And did not he tell you that at that time he said to Mr. Post, "I have already drawn a letter that I am going to write you"? A. I do not know that he said that to Mr. Post.

- Q. And when Mr. Reilly came back from that meeting prior to the sending of the letter of February 14, did had not tell you that at that meeting, after his statement made to Mr. Post, Mr. Post said, "Well, if you fellows are not going to co-operate, we will have to call our board together and see if we want to do business any further with you"? A. He did not tell me that.
 - Q. He did not tell you that? A. No.
- Q. And if that was said, that he kept secret from you A. He did not tell it to me. He did not tell me everything that was said at the meeting. I am quite sure of that
- Q. Mr. Bergdahl, do you know Mr. David Moeser? A From Boston?
- 11477
- Q. No, not Mr. Moeser from Boston; Mr. Moeser from Boston is not Mr. David Moeser. A. I do not know him personally, no.
- Q. Well, do you know who Mr. David Moeser, M-o-e-s-er, is? A. I am not sure, no.
- Q. Who is the president now of the N.R.D.G.A.? A Well, Mr. Moeser is the president, yes; that is why I asked I think he is from Boston.
- Q Oh, you think he is from Boston? A. I am not sure. I think he is.
- Q. Do you know what store he is connected with? A. Well, I am not sure.
 - Q. Did you ever hear of Conrad & Company? A. Yes.
- Q. Is he president of Conrad & Company? A. I think that is correct, yes.
 - Q. And he is a working retail executive? A. Yes, he is
 - Q. Well informed-- A. -as far as I know.
 - Q. As far as you know, would you say he is well informed and well qualified in the retail problem? A. In some retail problems.
 - Q. Well, do you think that some of the retail problems in which he is well informed and well qualified by reason

of being president of Conrad & Company and by reason of being president of the N.R.D.G.A. is upon the problem of style piracy, or do you think that is one of the cases or matters concerning which he is not well informed? A. If you will define what you mean by "well informed," I will answer you.

Q. Well, what do you understand by "well informed"?

By Mr. Weisman.

Q. Mr. Bergdahl, you remember Respondents' Exhibit 37, the Reilly letter of February 14? It was just referred to? A. Yes; yes, I do.

Q. You know that that letter was received by the Guild,

do you not? A. I learned that it was, yes, sir.

Q. Did you also learn that immediately upon its receipt the Guild, in an effort to ascertain whether or not the A.M.C. was authorized to make that statement, sent a wire which is in evidence here—and I will give you the number in a moment—to each and every member store of the A.M.C.? A. I heard that was the procedure.

Redirect examination by Mr. Haycraft.

Q. Calling your attention to Commission's Exhibit 89-

Mr. Weisman: You mean Respondents', do you not?

Mr. Hayeraft: Respondents'.

Examiner Averill: Respondents'.

By Mr. Haycraft.

Q.—Respondents' Exhibit 89, the following language: "The White House may be privileged under its agreement with you to buy and sell copies at this price line, and to advertise in this manner." What is the White House referred to there? A. That is a store in San Francisco.

11480

Q. Now, the language following that I have just read to you: "However, the Guild must do something to correct this situation, or other stores may be forced not to refrain from handling copies." I will ask you what you had in mind when you made that statement?

> Mr. Weisman: / I object to that as incompetent, irrelevant and immaterial. Here is a witness writes a perfectly plain letter. Now, he is asking him what he had in mind.

> Examiner Averill: Gentlemen, I do not want any further argument in connection with this mat-The reporter will read what the witness said up to this point.

> (Answer read as follows: "A. Well, it had been our intention-")

Examiner Averill: Go ahead.

A. —from the beginning to co-operate progressively-Examiner Averill: Yes.

A. (Continuing) The exemption that we had was not

intended to give us any right to just indiscriminately seek copies. It was merely a protection for us so that it would be an understanding about how much we should co-operate, and we took it for granted, as I did here, and I think the conversation that preceded this letter probably cov-11484 ered some of that, that there may be other stores that had similar exemptions to ours, undoubtedly did, but that if stores were to persist in advertising, not only having copies in their store, but if they were to persist in advertising, as this store did, and put it in words, see-

Examiner Averill: Yes.

A. —that we did not construe as co-operating progressively. That seemed a negative form of co-operation to

me—and that I thought something ought to be done, and I am quite sure I recall saying to Mr. Post that that ought to be—that that kind of vicious unco-operation, if you could put it that way, should be eliminated, or other retailers would have to be like vicious.

Examiner Averill: Now, wait. Hand me that exhibit you are referring to.

(Witness hands paper to Trial Examiner.)

Examiner Averill: Now, in connection with Respondents' Exhibit 90, which is the exhibit, the advertisement which you had before you at this moment—

The Witness: Yes.

11486

Examiner Averill: —is the language to which you specifically refer, the words "all copies of higher-priced dresses"—

The Witness: Yes.

Examiner Averill: —referring evidently to the pictures of dresses advertised at \$6.

The Witness: Yes, yes.

Examiner Averill: That is what you are referring to?

The Witness: Yes.

Examiner Averill: Those words?

The Witness: Yes, yes, sir. We have a store in that town—we had a store—called the Emporium, and the Emporium ready-to-wear manager said that it is pretty hard for him to try to co-operate even with our understanding, if this kind of advertising was to be used against him, that he would have to be like—in a like manner, unco-operative—but it was our intention to co-operate, and progressively so, but that, I think, explains my letter.

Examiner Averill: The language you used?

The Witness: Yes.

11489

Examiner Averill: All right.

Mr. Weisman: Now, I move that the answer be stricken out.

Examiner Averill: Motion denied.

By Mr. Haycraft.

Q. Upon cross examination you were asked numerous questions with respect to not acquainting members of your organization—that is, the A.M.C.—in writing with the terms then existing, or that you say you had with Mr. Rentner, Mr. Maurice Rentner, as to exemptions? A. Yes.

Q. I will ask you if there is an explanation to that? A. There is.

Q. What is the explanation as to why you did not acquaint the members of the A.M.C. in writing with the exemption that you say you had? A. I might say that this was a verbal agreement between Mr. Maurice Rentner and myself and some others, and that it would be better for the Guild, and for the work it was trying to do if it would not be generally broadcast that such exemptions existed, and so I agreed and did follow that understanding and not broadcast it and write it—not broadcast it in writing. I agreed to keep it verbal, and I think I did succeed in doing that.

By Examiner Averill.

11490 Q. When you say "verbal," you mean oral? A. Yes, orally; yes, orally.

By Mr. Haycraft.

Q. Your attention was directed to the fact that certain members of the A.M.C. had co-operated and continued to co-operate with the Guild. Hutzler Brothers was one of the members that was called to your attention? A. Yes.

Q. I will ask you whether or not you know why Hutzler Brothers agreed to co-operate and did co-operate?

Q. Mr. Bergdahl, if you know, tell us if you know why they continued to co-operate after the red carding of certain other A.M.C. stores? A. Because—for two reasons—because they handled better merchandise to a larger degree in their store than the average department store does, and they felt that they could not get along without the Guild.

Mr. Weisman: I object to that.

Examiner Averill: Oh, no, that is all right. He can give the reasons and then we will consider them all at one time.

11492

A. Secondarily, Mr. Charles Hutzler was, I believe, chairman or president of the local guild and felt that he understood the Guild and probably could get along with him. For those two reasons they felt, but above everything else and particularly because they had this merchandise, they had to have this merchandise of the better class, they felt that they had to go along with the Guild

By Mr. Haycraft.

Q. You were also asked with respect to Horn & Company.

Examiner Averill: He told us that before.

11493

Q. Were the reasons you have assigned for Hutzler Brothers continuing to co-operate with the Guild the same reasons that applied to the others, or were there different reasons, and if so what were they? A. Slightly different. Yes, slightly different. Can I take them up as a group and sort of cite the thing as a whole?

Q. Yes, go ahead and give us the differences. A. The Guild red carded B. Forman and Reich-Cumler Company

along with the other A.M.C. stores on February 17, or thereabouts.

- Q. What happened then? A. Those stores remained red carded until they had to have the merchandisc which they had been accustomed to having, and therefore signed up with the Guild.
 - Q. Do you know the approximate date of that?

By Examiner Averill.

Q. When you say "signed up with the Guild," they had theretofore been signed up, and you mean that thereupon renewed because they had already been signed up and had signed declarations of co-operation, but they renewed these former declarations?

Mr. Haycraft: I do not think so.

By Mr. Haycraft.

Q. Not former declarations, but they signed up new ones, did they not? A. They signed declarations of some kind with the Guild.

Mr. Weisman: That answer shows us now very definitely just where we are not, rather than where we are. "They signed declarations of some kind with the Guild." Now, we know just what they did sign. It makes a fog look like a bright sunny day.

Mr. Haycraft: Maybe to you.

Mr. Weisman; Oh, you can penetrate it?

Examiner Averill: Gentlemen. In other words, they then made satisfactory arrangements?

The Witness: Yes, sir,

Examiner Averill: By which they could now buy Guild merchandise?

The Witness: Yes, sir.

Examiner Averill: Proceed.

11496

y Mr. Haycraft.

Q. And do they now buy Guild merchandise? A. They

Q. I call your attention to Respondents' Exhibit No. 86, eing the letter from B. Forman to Mr. Rentner under ate of December 29, 1932, which you identified on your coss-examination. Do you recall that? A. Yes, I recall at.

Q. Do you know anything about the firm of Sibley, indsay & Curr Company mentioned in that letter? A.

Q. What is that firm? A. Oh, they are a large departent store that handles a wide range of merchandise, both w and better-priced lines.

Q. What is the nature of the business of B. Forman in at respect? A. They are a specialty shop and they hance relatively a large percentage, for their business, of the merchandise.

Mr. Weisman: I ask that the latter part of the answer be stricken out as being obviously not within the witness' personal knowledge as to the percentage that they handle.

Examiner Averill: I think he could know as to what class of merchandise is handled in his member stores.

Mr. Weisman: But I referred to the percentage. He is going into percentages now. Pretty soon he will tell us what the president thinks when he gets up on a rainy morning.

Examiner Averill: I suspect we all know that. Mr. Weisman: On second thought I will withdraw the objection because the probative value to be given this witness' testimony is all the better evidenced by his readiness to answer almost any 11498

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Herbert L. Bergdahl-For Commission-Redirect.

kind of a question, and his eagerness to put it something wherever he can, to be witness and advocate at the same time.

Mr. Haycraft: I move to strike that out.

Mr. Weisman: Oh, I think it is a very proper observation and certainly justified by the action of the witness.

Examiner Averill: Proceed. That will not benefit us very much, I am afraid.

By Mr. Haycraft.

Q. I show you Respondents' Exhibit No. 8742

11501

Examiner Averill: Is it not Commission's Exhibit 874?

Mr. Haycraft: So it is.

By Mr. Hayeraft.

Q. (Question read as follows: "Q. Are the rules indicated in this letter representing to be part of the by-laws those provisions which you had in your mind, or which you made reference to in your testimony; we n reference was made to trade practice rules?") A. Yes, those were the trade practices, and along with others that I have had reference to in my testimony.

Q. Mr. Bergdahl, you mentioned when you first come, down this morning that there were certain changes which you desired to make in your testimony. Are you prepared to indicate those at the present time?

Examiner Averile: Is he referring to corrections or is he referring to typographical errors, or to changes?

Mr. Haycraft: I do not know just exactly what it is, your Honor, and I would prefer the witness to state.

Examiner Averill: Go ahead.

The Witness: On page 7034, Mr. Weisman asked if it had ever come to my attention that there was a meeting in November, 1932, that was attended by the following people, and named the people.

Examiner Averill: I think you have stated that sufficiently. Just state the line on the page.

The Witness: Line 11, and a list of names that he started to read on line 15, and then that was the question to which my answer appears on page 7035.

Mr. Haycraft: Line 25 at the bottom of the page?

The Witness: Line \$5. I said it did not at that time. I have refreshed my memory and find that I did know about those meetings—this meeting in particular, and others at that time.

(There was a discussion off the record.).

Mr. Weisman: I suppose you now refer to page 7039, commencing with the question at line 17, "Did Mr. Ladd in these conversations even say to you," and do you desire to make a statement about that?

The Witness: It begins on page 7039, and there is only one thing that I wish to change there—

Mr. Weisman: Yes.

The Witness: —and that is in connection with where I had stated that I had learned about it since this case began.

By Mr. Haycraft.

Q Learned what? A. I made a statement that I had learned that since this case had begun, and by that I inferred that I had learned through testimony that had been given here that the New York retailers did ask that the

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\$10.50 manufacturers came into the Guild. That was my impression I had received, and then I reviewed what I had read—that is the impression that I thought I had gotten out of the evidence contained in exhibits for the Commission, I believe, being Commission's Exhibit 18 in which one when I read it I thought I noticed that, but now that I have read it again I find that they did not attempt—that they did not ask that the \$10.75 manufacturers be come members of the Guild, and therefore I want to cell the Commission's attention and the Examiner's attention to the second page of Exhibit 18, and to point out—

11507

Mr. Weisman: This is not a correction, this is argument with the Court, and I do not want this to go on the record. He says he wants to correct his testimony and his testimony was when did you learn about it. He testified that he learned about it during this trial. I submit that if he wants to correct it he should say that it is not correct, or in what respects it is not correct, and not try to argue the case with the Commission as he seems only too anxious to do.

Examiner Averill: I think that is a fair objection to the testimony. Just state the correction you desire to make.

The Witness: I thought I had learned from my reading of the exhibits here when this case was in New York earlier in this proceeding, when these exhibits were introduced, that the New York retailers had asked the \$10.75—did ask the Guild to take in the \$10.75 manufacturers, but I find on

refreshing my memory that I had not learned any such thing, in fact, that they did not.

Mr. Weisman: I object to that, because now he

is trying to argue the A.M.C.'s side of the case.

Examiner Averill: He said that he learned differently.

The Witness: I learned just the opposite, or differently

Mr. Weisman: I think that is enough on that.

Mr. Haycraft: Except, Mr. Examiner, I do want to ask counsel for the respondents if he has finished with the exhibits which were marked for identification during the testimony, with respect to the estimated volume of business.

Mr. Weisman: We find in the first place that we have not been able to fully complete our own check against it, and in the second place we find it is completely erroneous in so far as our figures are concerned so far.

Examiner Averill: I remember that exhibit quite well. It was a tabulation. If it is found necessary later on when you gentlemen get together on the figures in order to meet any difference that you may have had in connection with the same, why, we are right here in New York and you can go over this matter with Mr. Bergdahl, we can call him over and we can ask Mr. Bergdahl to come up here and explain any discrepancy, if there be any, and then he can testify further in that regard only, if it is necessary to do so, to see whether it is admissible or not.

Mr. Weisman: We have all come to the conclusion heretofore that it was not admissible. The thing would have to be introduced over objection, if at all.

Examiner Averill: Then it can be settled without that difficulty when we come to it. We will not attempt to meet anything until we come to it.

Mr. Weisman: I want this to appear at this point on the record: I respectfully again move to strike out all of this witness' opinion testimony with regard to the reasons why the various

11510

TRANSPORTER

Herbert L. Bergdahl-For Commission-Redirect.

enumeraled persons continued to de business with us after the red carding of certain other A.M.C. stores. In that connection, I particularly call to the Court's attention, and to the Commission's at tention, to whom I believe this record will ulif mately go, that the fact that Hutzler Brothers and Horn Stores, the Commission has had before them. and that the attorney for the Commission knew at the time that he had them before him that the people were co-operating with the Guild right down to the date of the trial; that, therefore, his studied avoidance of asking them the question directly to their reasons, and, rather, seeking to rely upon an obviously hostile witness' statement of opinion, being certainly opinion evidence with regard thereto is highly improper and prejudicial to the substantive rights of the respondent.

Examiner Averill: Gentlemen, if anything in the issues could be materially related, altered, or affected, or changed by any of this testimony in connection with the specific people co-operating at the time, it might be another thing, but it is so clearly evident that it is immaterial for any worth while purpose in connection with this case, and on the further ground that I could not attempt to strike all of the evidence in there that might be hearsay without going over it line by line, and further, that we also have to consider the thousands of exceptions to the hearsay rule that are in use to-day, as it may be brought out by consideration, for instance, of our good friend Mr. Wigmore, who has very successfully brought in so many exceptions to the hearsay rule which we should not have dreamed of except for his learned treatises of the subject, and I think for the last forty years the tendency has been to disregard the hearsay rule almost entirely.

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H. L. Berydahl-For Commission-Redirect-Recross.

Mr. Weisman: I think that we may have been whittling it away.

Mr. Feldman: By a sort of tweedle-dee, tweedledum process."

Examiner Averill: That I am compelled to deny · the motion.

Mr. Haycraft: Nothing further.

Recross-examination by Mr. Weisman

Q. On your redirect examination, you gave us an explanation as to what was in your mind when in response to Exhibit 89 you said, "If the Guild"--

Examiner Averill: Referring to both of them? They are both tied together.

Mr. Weisman: I beg your pardon?

Examiner Averill: Referring to Respondents' Exhibits 89 and 90? They are so intimately connected that you cannot separate them.

By Mr. Weisman.

Q. You said two things: "If the Guild must do something to correct this situation," and you said two things further-you said first that you understood that retailers were to co-operate progressively; do you remember using the word "progressively"? A. Yes.

Q When you said "progressively co-operate," I take it 11517 you meant that the co-operation as time went on was to be given closer and closer adherence to; closer and closer adherence to the declaration of co-operation, as written; is that what you mean when you said "progressively"? A. With the exceptions and explanations that I have already gven.

Q. Yes, I understand. You now also state that when you read this letter, Respondents' Exhibit 89, and which

includes Respondents' Exhibit 90, and which was dated 1934, you used the words that the advertising of copies unco-operating. Do you remember using that word? Yes.

Q. I understand, correctly, do I, that by the term "

co-operating" you meant something that goes beyond lack of co-operation, and something that was definit detrimental and harmful and affirmatively so; is that yielden, and was your Mea when you said "unco-operative the sound of the sound of

A. It was not within the understanding that we had,
Q. That understanding which you had, and which
have described as "progressively" was for all of you

A.M.C. stores? A. Yes.

Q. Let me show you this little advertisement—

Mr. Weisman: First, I will ask to have to marked for identification.

(An advertisement was marked for identificat Respondents' Exhibit 91.)

By Mr. Weisman.

Q. I show you Respondents' Exhibit 91, which was advertisement on March 10, 1935, by Abraham & Stra Brooklyn, N. Y. and ask you if that was ever called to y attention?

Examiner Avgrill: "Yes" or "no."

The Witness: Yes, the subject matter was, ye Mr. Weisman: I offer the paper in evidence.

Mr. Haycraft: I object as incompetent, immarial and irrelevant and not a proper part of recre

examination.

(The advertisement heretofore marked for id tification Respondents' Exhibit 91, was marked an exhibit and received in evidence.)

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By Mr. Weisman;

Q. I call your attention to the fact that Respondents' Exhibit 91, of Abraham & Straus, refers to dresses—in fact, it is the direct advertisement of dresses, and it says, "Both these dresses were outstanding successes at Mianithis year, They sold from \$18 to \$25. These are identical copies at \$5.98." In your opinion, was that also uncooperative? A. I have so testified, I think.

Q. Was it? A. It was.

Q. This was called to your attention? A. Yes.

Q. Was the subject matter of this transaction taken up and explained to you? A. I have so testified.

Q. I do not care whether you have so testified or not. Was it or was it not?

Examiner Averill: Just answer "yes" or "no."

A. Yes.

By Mr. Weisman.

Q. Did you ever have any occasion in March, 1935, when—or do you remember the occasion, I will put it that way—do you remember the occasion in March, 1935, when the substance of this advertisement was called to your attention by the Guild officers? A. Yes.

Q. At that time did you make a thorough investigation into this concern, or into the facts, rather, concerning the placing of this advertisement?

Examiner Averill: "Yes" or "no."

A. No.

By Mr. Weisman.

Q. Did you pay any attention to it? A. To the placing of the order for that advertisement?

Q. The order for the goods. A. No.

11522

11525

Herbert L. Bergdahl-For Commission-Recross.

Q. Did you take any step to remedy this situation? A ves.

Q. What did you do? A. I told my buyers that in so far as they were one of those which—this merchandise being in Abraham & Straus in so far as they were I do not know to what extent they were guilty of anything, but if they were that this practice should be avoided since we were trying to do along with the Guild.

Q. What did you do about this when it was called to your attention? A. I called Mr. Post.

Q. Mr. Post was in the Guild, not in Abraham & Straus.

Examiner Averill: Oh, no. He may have called up and asked him something about it. I do not know. But he is entitled to say that.

Mr. Haycraft: I object and insist that he be allowed to finish his answer.

By Mr. Weisman.

Q. Have you finished your answer? A. No.

Mr. Haycraft: I think we ought to confine it first as to who called it to his attention and then we can go into the question in an orderly way if we are going into it.

By Mr. Weisman.

Q. Go ahead. A. When it was called to my attention I called up Mr. Post and I talked to him about that.

Q. Is that all you did? A. And I told my buyers that I did not want them to buy goods—to buy copies whenever possible.

Examiner Averill: To buy copies?

The Witness: Yes.

Examiner Averill: You mean at any time that they had been copied?

The Witness: No, to buy—I did not want them to buy copies wherever possible.

Examiner Averill: I do not understand.

The Witness: He asked me what I did. I called Mr. Post and I talked to Mr. Post and I called my buyers and instructed by buyers—this is my recollection of the matter—I told them in so far as they had bought copies, I did not know that they had, but I gave them instructions that I did not want them intentionally to try to buy copies.

Examiner Averill: I do not understand yet. You mean to say that when the advertisement of any concern comes out in the paper that your buyers go to that place and look at the garments and buy copies of them?

The Witness: No. This advertisement hat reference to copies of dresses. This is the advertisement in which it says that these are copies of some other dresses.

Examiner Averill: Yes.

The Witness: I gave my buyers instructions that they would not intentionally buy copies; that it was our intent to progressively co-operate with the Guild, and in so far as possible they should avoid any attempt to buy copies of dresses which were copies of Guild merchandise sold—do you see?

Examiner Averill: No, I do not see. I do not see what the effect of that can possibly have upon this advertisement.

The Witness: I agree with you, Judge. I do not, either.

Examiner Averill: You say that you felt that this is an advertisement which you thought indicated that they were not co-operating?

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The Witness: He asked me what I did when I saw the advertisement and I told him what I did

Examiner Averill: Apparently you did not have anything to do in connection with the advertisement.

The Witness: No, sir; it is not. I did not. It was called to my attention.

Examiner Averill: Because your buyer had to buy copies does not mean that she had anything to do with this advertisement?

(There was a discussion off the record.)

11531 4 By Mr. Weisman.

Q. Did you ever tell Abraham & Straus that in order to co-operate that in your opinion they should withdraw this merchandise from sale? A. No, I do not recall that I did.

Q. Did you ever tell Mr. Post in words or substance that if the Guild took any action against Abraham & Strans by reason of this advertisement that the A.M.C. stores as a body would refuse to purchase merchandise from the Guild houses? A. No, sir.

Q. Did you ever, when you spoke to your buyers, talk to Miss Dean about this situation? A. I did.

Q. What did you tell Miss Dean about this? A. I have just finished telling you that I have told my buyers, which is Miss Dean in this case, to avoid buying copies whenever she knew the dress was a copy.

Q. (Resumed) When this advertisement was called to your attention, was it not first called to your attention by a Mr. Rothschild of Abraham & Straus? A. No.

Q. Did not Mr. Rothschild of Abraham & Straus call you up and tell you, in words or substance, that the Guild had complained to it, or to him, or to his department store, Abraham & Straus, concerning the subject matter of this ad? A. No.

Q. Did not Mr. Rothschild, or anyone else, of Abraham & Straus, state to you, in words or substance, that the purchase of this merchandise, and its offer for sale by A. & S., was due to some activity of Miss Dean of your A.M.C.? A. It is two questions in there.

Mr. Haycraft: Double question, Mr. Examiner. Examiner Averill: Ask it singly, then, please. Mr. Feldman: He understands it.

Examiner Averill: Just cut it in two, if necessary.

Mr. Weisman: We will have it read. (Question read.)

By Mr. Weisman.

11534

Q. Did not Mr. Rothschild, or anyone else, of Abraham & Straus, say to you, in words or substance, that the purchase of this merchandise by A. & S. was due to some activity of Miss Dean of your A.M.C.?

Examiner Averill: I do not understand—all of you are guilty, but afflicted, but really I do not see what difference it makes. Let us get at it, whether the buyers, to his knowledge, bought these dresses advertised in this advertisement, Respondents' Exhibit 91.

Mr. Weisman: All right

By Mr. Weisman.

11535

Q. Will you give us an answer to that question as propounded by the Court? A. To my knowledge, they did not.

Examiner Averill: Now, you may ask about this other matter.

Herbert L. Bergdahl-For Commission, Recross.

By Mr. Weisman.

Q. Let me ask you, when you say "to your knowledge, they did not," did you answer that question in that fashion because it is your practice, or Miss Dean's practice, to get the merchandise aside, show it to A. & S., and then have A. & S. place an order on merchandise that she has collected? Is that the reason you answered the Court in that studied fashion? A. No.

Q. Well, now, let me ask you-

Examiner Averill: Let hint ask what the transaction was.

11537 By Mr. Weisman.

Q. Tell us just what the transaction was in connection with the acquisition by Abraham & Straus of the dresses shown on Respondents' Exhibit 91?

Examiner Averill: If he knows.

BAMr. Weisman.

Q. If you know. A. I don't know the exact details of the acquisition.

Q. I do not want the exact details. I want to know what you know, without hiding behind your lack of knowledge of exact details.

11538

Mr. Haycraft: I object to that question, to the form of it, Mr. Examiner. The last part of that question has no place there.

Examiner Averill: I think it has. I think that question is perfectly proper, Mr. Haycraft.

A. I know that Abraham & Straus purchased the dresses, and advertised them, and that the subject matter was brought to my attention after Mr. Post had called Abraham & Straus on this ad.

Examiner Averill: But do you not know one way or another what all this is about Miss Dean, prior to the insertion of the advertisement, do you know whether Miss Dean, or any buyer of the A.M.C., induced Abraham & Straus to buy the copies which are advertised in that advertisement, Respondents' Exhibit 91?

The Witness: No, I do not know.

Examiner Averill: You do not know?

The Witness: That she did.

By Mr. Weisman.

Q. Did Mr. George Ladd, of Abraham & Straus, ever tell 11540 you that she did? A. No.

Q. Did anybody from Abraham & Straus ever tell you that Miss Dean was responsible for Abraham & Straus getting these copies of originals? A. I——

Examiner Averill: Did anyone tell you now, he is asking you? He is not asking you whether that is a fact or not. He is asking you whether anyone ever told you.

The Witness: I was told that she assisted.

Examiner Averill: . Yes.

Mr. Feldman: That is the answer.

By Mr. Weisman.

Q. Who told you she assisted? A. Miss Carpel, I be-

- Q. And who is Miss Carpel? A. She was divisional merchandise manager of the store at the time.
- Q. At A. & S.'s? A., Yes.
- Q. When Miss Carpel told you that, did you ask Miss Dean as to what part she had played in this? A. Not at that time.

- Q. When you say "not at that time," what do you mean by the words "that time"? A. Well, later.
 - Q. How much later? A. Oh, within the week.
- Q. What did you tell Miss Dean about this within the week? A. I told her that if she was responsible for this merchandise being in Abraham & Straus's in any way, in copies, that is, in this form, copied dresses of some other dresses, and that she knowingly did this, that she should stop it.
- Q. Well, did you ask her whether she knowingly did it?

 A. Yes, I think I did.
- Q. And did she not tell you, as a matter of fact, that not only did she knowingly buy them, but she had them knowingly made up? That is, she ordered, or caused some one to order the merchandise, to copy somebody else's dresses? A. No, sir; she did not.
 - Q. She never said that to you? A. No.
- Q. Did you ever say, in words or substance, to Mr. Post, that you would not cause or aid in the withdrawal of this merchandise from sale by reason of the fact that Miss Dean had placed orders for the linen with the houses, and had ordered, and that the linen was a special kind of linen and had been made up specially for the making of these copies, and, therefore, it would be too great a loss? A. No.
 - Q. Did you ever hear anything about that? A. No.
- Q. Concerning special linen? A. Mr. Post has told me subsequently that that was his idea of the transaction, I believe, and I told him, I think, that it was not.
- Q. Did you ever ask Miss Dean whether that was? A. Yes.
 - Q. Did she ever tell you? A. She said no.
- Q. What did she tell you about this transaction? A. Well, she said that she did not buy the linen, or the piece goods, or we did not buy them. I know that we did not buy the linen.

11543

Q. No, that is not- A. And---

Q. I do not want to know what she told you she did not do. I want to know what she told you she did do, her entire connection with this transaction.

Q. Now, just tell us in your own words what she told you? I assume you spoke with her within a week after this came to your attention, and I want to know at that time what she told you she had to do with regard to the dresses shown on Respondents' Exhibit 91? A. As I recall the she told me if two buyers bought those—the Abraham & Straus buyer, and herself, worked together, and when these dresses were purchased—as to the details I do not recall that she told me anything they did about the linens, or anything else.

11546

Examiner Averill: Not talking about that, not interested in the linens, but what I am interested in really is knowing what Miss Dean knew in regard to those copies, if she told you. Of course, unless she told you you would not know—in regard to those dresses which Abraham & Straus advertised in that Respondents' Exhibit 91—what she told you was her connection with that matter. She evidently had some connection. Just tell us what it was.

The Witness: I have told your Honor that they bought the dresses together, as I recall it.

Examiner Averill: What do you mean, bought them together.

The Witness: The two buyers, I think, worked together; they consult each other over the telephone, and they work——

Examiner Averill: What were the dresses?

The Witness: I do not know, your Honor, I think they bought them in the manufacturers room.

Examiner Averill: In the showroom?

The Witness: In the manufacturers' show rooms.

Examiner Averill: In the manufacturers' show rooms?

The Witness: I think so. They may have bought them in our office, but I do not know.

Examiner Averill: Did Miss Dean, in the course of her conversation with you, ever tell you as to her knowledge of the fact that the dresses she was co-operating with the other buyer in obtaining were dresses which she knew were copies of dresses which, according to this advertisement, were outstanding successes at Miami this year, and were sold from \$18 to \$25, "our identical copies \$5.98"? Did she tell you anything about that? Do you have any knowledge of that state of affairs?

The Witness: No.

Examiner Averill: That is what I want to know.

The Witness: I do not recall that she did.

Examiner Averill: Do you not see that is the point in this thing?

The Witness: Yes,/I know, but I do not recall that we had any conversation about the origin of these styles.

Examiner Averill: You see, it is evident from the advertisement that certainly Abraham & Straus had some idea of it.

The Witness: Yes.

Examiner Averill: Because they could not have imagined it.

The Witness: Yes, yes, but I did not write the ad, and I did not discuss how it was written, or anything else.

Examiner Averill: I did not ask you that. I asked you whether Miss Dean told you anything about that.

11549

By Mr. Weisman.

- Q. Let me ask you whether or not this is a fact: Shortly before March 10, 1935, do you remember that Miss Dean took a holiday and went down to Miami? A. I do not recall.
- Q. Do you not know that she did? A. I do not recall if she did.
- Q. Look- A. I know she has had holidays, but's
- Q. I direct your attention, my good friend, to this ad. Now, directing your attention to that ad, and trying to conjure up all the memory you have, see whether or not you cannot remember now that shortly before that time Miss Dean—who works under you, by the way, does she not? A. Yes.
- Q.—was on a vacation in Miami Beach, Florida? A. I know that she took a boat ride down to Bermuda, or some place, but I am not sure that she went to Miami Beach.
- Q. Well, what makes you think it was Bermuda? A. Because I know that she took a boat ride.
- Q. About this time? A. It was about two years ago; I am not sure of the exact date.
- Q. Well, as a matter of fact, let us see whether you recall any of these copies at \$5.95, identical copies at \$5.95, of dresses which were outstanding successes in Miami, and sold from \$18 to \$25, were any of these dresses at that time—that is, any of the copies purchased by other members of the A.M.C.? A. Yes, I think they were.
- Q. Now, now, who purchased them for the other members of the A.M.C. at about that time? A. I believe, for the most part, the buyers purchased them themselves, but I think also Miss Dean may have placed some of the orders.
- Q. Well, did Miss Dean tell you that? A. I found it out subsequently.

11552

Herbert L. Bergdahl-For Commission-Recross.

- Q. Why did you not tell us about it of your own volition a few moments ago? A. You did not ask me—
- Q. I see. A. —whether we placed orders for our other stores.
 - Q. I see. A. I am not-
 - Q, I see. It is all right. I am asking you now-

Examiner Averill: The great question, and that is all he ought to be directed to now—

Mr. Weisman: What is that?

Examiner Averill: The great question now is whether at the time of this transaction, when he said other buyers did place orders—they knew that they were copies.

Mr. Weisman: Yes.

Examiner Averill: That is the only thing that I am trying to find out.

Mr. Feldman: That is right.

Examiner Averill: As to whether Miss Dean, or any other A.M.C. buyer, knew that the dresses which they were buying outright for their account, for the account of other stores, whether it was all done by the co-operation of the buyers of other stores, that assisted in buying—whether they knew at the time that they were copies. I am not trying to find out what the other buyer for the store may have known, but what Miss Dean knew. That is all that I would like to know.

11556

By Mr. Weisman.

- Q. Look, Mr. Bergdahl, when Miss Dean—Miss Dean is a well-informed person, is she not, in the general ready to wear market? A. In the low end.
- Q. And she was such in the fall of 1935? A. I should say so, yes.

Q. When you spoke to Miss Dean, did you tell her that she must not buy copies of higher-priced merchandise just as was shown in this ad? A. I told—in substance—yes.

Q. Yes. Did you ask her, in substance, whether or not when she purchased the dresses shown by Respondents' Exhibit 91, she knew they were copies of higher priced merchandise? A. I may have.

Q. Well, as a matter of fact, do you not know that they were purchased because they were copies? A. No, I do not.

Q. Did she not ever tell you that? A. I cannot say that she did, no.

Q. From your experience in this business, from your knowledge that you have gained as merchandise manager for the A.M.C., do you not now know that the buyer purchasing these dresses, in the line of the buyer's duty, bought them so they could be sold as copies of the dresses of which they were copies? Do you not know that? A. I think that is right, yes, definitely so.

Q. So that, in effect—I mean, now, there is no quarrel about this: That when Miss Dean bought those dresses, she, of course, knew they were copies? A. Well, if you want to say so, go ahead.

Q. Yes. A. But do not put it in my mouth.

Q. But do you not know that, also? A. No, I do not know it.

Examiner Averill: I am going to ask this—gentlemen, you have heard all of this, and here is the only thing that is involved: Ask the witness if he can explain why in 1934 he objected to the Guild to an advertisement of White's store in San Francisco, Respondents' Exhibit 90.

Mr. Feldman: 89:

Examiner Averill: 90, Respondents' Exhibit 90, in a letter which is Respondents' Exhibit 89, and

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which advertisement refers to, and specifically states, that the dresses advertised are copies of higher-priced dresses, and whether in 1935 when practically the same thing occurs in an advertise ment of a member store, why he did not take some action, and if he did take any action, what was the action. He has told us about that, but I want to see why there was no objection made by them about 1935 when they did object about 1934, that is all-style of advertising.

· The Witness: Shall I answer that?

Examiner Averill: Yes, sir; please. .

The Witness: As I recall it, the Guild was not able to do very much in connection with stopping the practice of the White House in San Francisco.

Examiner Averill: Yes.

The Witness: And I think Mr. Post wrote letters out there in which he said that not much could be done without shoppers.

Examiner Averill: Yes, that is all in.

The Witness: And that there were towns where there were no shoppers, and this practice went on. At least the suggestion that I had made in a letter was not accomplished, that is, effectively; other retailers were not being stopped from handling copies. So, when in March of 1935, one of our own stores did this, and I think the management did not like it, and said so, and I told Mr. Post at the time that I thought it was unfortunate, but, nevertheless, it was done, and it could not be helped. We had the money invested in the merchandise, and we did have exemptions in emergencies, to handle the merchandise. It had never been revoked, so we would handle And he said at the time that in that case-I never protested or said or condoned the practice when our store did it, I did not, I said it was un-

11561

fortunate, but that the Guild was not yet controlling low end merchandire, and he said in that case, as I have testified previously, in that case I will return your declaration. It was that precipitate action that I objected to, and not the fact that the ad was run as it was.

Examiner Avefill: All right.

· The Witness: I think the ad was wrong, and I think the store said it was wrong, and they did not like it, and we did not like it.

Examiner Averill: I now understand; thank you.

By Mr. Weisman!

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- Q. Well, as a matter of fact, was it not that the store called up and said that it was wrong, and the store wanted to return the goods, because they felt that they were not properly co-operating, and it was you that prevented them, and said no, you would not let them return the goods? A. That is not right.
- Q. We will have Mr. Ladd here. A. You can have him
- Q. To see whether it is right. A. He is the wrong man to get, though, because he was not in the transaction.

Examiner Averill: Now, now, just do not-

By Mr. Weisman.

Q. In an effort to justify yourself in your explanation to the Court, you said that nothing was done, or was able to be done, about the San Francisco transaction, and that the Guild could accomplish nothing because it did not have shoppers at that time.

Examiner Averill: He said it could accomplish little.

Mr. Weisman: Little.

By Mr.-Weisman.

Q. I ask you whether or not you remember receiving this letter from the Guild in reference to your letter, Respondents' Exhibit 89? A. Yes, I recall getting that letter.

> (The paper heretofore marked for Identification Respondents' Exhibit 92, was marked as an exhibit and received in evidence.)

By Mr. Weisman.

Q. By Respondents' Exhibit 89, you wrote to the Fashion Originators Guild-

11567

Examiner Averill: Now, gentlemen, the papers speak for themselves.

Mr. Weisman: I just have one question.

By Mr. Weisman.

- Q.—that the Guild must do something to correct the situation. The Guild did write you that the offending store had thanked the Guild for ealling the transaction to their attention, did they not? A. Yes, as I recall it.
- Q. And the Guild, further, advised you that they had received assurances that such a thing would never happen again, did they not?

.Mr. Haycraft: I object, the exhibit is there, it is purely argumentative.

Examiner Averill: It is all in the letter, it is just arguing over again.

Mr. Weisman: Because he said to your Honor that they did very little.

Examiner Averill: There is the letter.

By Mr. Weisman.

Q. Those things are your ideas of being able to do very little to correct such abuse? A. That does not mean that it was an accomplished fact.

11569

Q. No, no, that is your opinion? A. Yes,

- Q. You volunteered the information to me that if I got Mr. George Ladd of Abraham & Straus to testify concerning this transaction, I would have the wrong man. Who is the right man? A. I told you Miss Carpel, I think, handled this transaction.
- Q. Do you know whether Miss Carpel is still with Abraham & Straus? A. I think she is not, in the same capacity, but I think she is there.

Q. All right. A Unless she has retired.

·11570

AFTERNOON SESSION-3 P. M.

John Block was thereupon called as a witness for the Commission and, having been first duly swort, testified as follows:

Direct examination by Mr. Haycraft.

Q. What is your name? A. John Block.

Q. Where do you live? A. 187 Fifth Avenue, New Rochelle, New York.

Q. What is your occupation? A. Resident buyer.

Q. In what industry? A. We buy for out-of-town department stores and specialty stores throughout the country, all lines of merchandise.

Q. All lines of merchandise? A. Yes, all lines of merchandise handled by department stores.

Q. What is the name of the firm you are associated with? A. Kirby, Block & Company.

Q. What position do you hold in that firm? A. General manager.

Q. Where does it have its place of business? A. 128 West 31st Street, New York City, New York.

Q. Will you briefly describe, for the record, the service that you render for the stores, the outlying department stores that you buy for? A. We represent these stores in the New York market and help to fill their orders for merchandise; sometimes, when their buyers, when the buyers for those stores are in the city and when the buyer are not here, we go out and fill their requests, we also kee our stores posted as to market trends, style changes, and so forth. We also give them space where they can inspect samples, receive visiting salesmen and so forth. Occurse, there are other incidental duties, but those, I think are the salient features of our work:

11573

- Q. Do you have buyers of your own employed by you own organization? A. Yes, sir, we have.
- Q. Approximately, how many? A. I should judge about seventy-five or eighty buyers, including the assistant buyers.
- on ally, I have been in this business? A. Per sonally, I have been in this business since 1907.
- Q. In New York City all of the time? A. In New York City all of the time, yes, sir. My firm has been in existence since 1916, the winter of 1916.
- Q. Have you kept and occupied somewhat the same position in that period of time, since 1916, that you occup to-day, or has there been a change? A. Well, the position has been the same, except when the firm was smaller I disactual buying in addition to looking after those affairs of

- the company in a general way, whereas, to day there are others who have supplanted me in the buying of merchandise.

 Q. Approximately how many accounts, or how many results.
- tail stores, do you buy for? A. Oh, I should say, between 125 and 150.
- Q. They are located all over the United States? A. Al over the country, from coast to coast.

Q. And you buy for any particular chains or groups of department stores or are they all individual stores? A. As far as I know they are individual stores, although sometimes a store will have a branch—they will have a main store in a larger city and some branches in smaller cities, but I would not call them a chain, because usually——

Mr. Albert (interposing): If your Honor please, I object and move to strike out the latter part of the answer. As to what the witness will not call a chain, if he will not call it a chain, we are satisfied with the answer. We are not interested in his reasons for not wanting to call anything anything or not.

• Examiner Averill: Yes, just say in your opinion it is a chain or it is not. That is what he is asking you.

A. Well, may I say this, that in my opinion a chain of stores is one where the merchandise in all stores is of a like nature, but where the stores differ as to quality and grade of merchandise handled and where some of the stores have departments and others have not, then it hardly fits in as a "chain."

By Mr. Haycraft.

Q. Among other articles of merchandise does your organization buy ladies' ready-to-wear apparel for the stores it represents? A. It does.

Q. Has that been true all through these years? A. Yes, sir.

Q. Are you familiar with the Fashion Originator Guild of America, Inc.? A. Yes, sir.

Q. When did you first learn of the existence of that organization? A. Well, I cannot say as to the exact date, but I think it was some time in 1933. We had some meet-

11576

ings and there were some letters sent out, but I do $_{10}$ recall the exact dates right now.

Q. Do you recall how the Guild came to your attention the circumstances under which it came to your attention Mr. Block? A. We had a meeting with Mr. Rentner an some other gentlemen in the manufacturing business whom I do not recall now, whether or not—that is, I do not recall now whether or not that meeting was prior to general notice that was sent out concerning the aims of the F.O.G.A. or after that notice was sent out.

Q. I show you Commission's Exhibit No. 14, which at the minutes of the meeting held at the Garment Cente Capital Club, on February 17, 1933, attended by representatives of a number of resident buying offices, including Kirby, Block & Company—was that the name of your firm at that time or did your firm then go under the name

of Kirby, Block & Company? A. Well, I do not know whether it was 1933 or 1932 that the style of the name was changed.

Q. Do you recall attending a meeting on or about the

date which was attended by members of the Fashio Originators Guild of America? A. Can I see that?

Q. Yes.

(Commission's Exhibit 14 was handed to the winess.)

Mr. Albert: What was the question? (The question was read by the reporter.)

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A. I am not sure that I was present. Somebody pro ably from our firm was there.

Mr. Albert: I ask that the latter part of the a swer be stricken out. The question is a very simp one and it can be answered directly.

Examiner Averill: And I think the answer also simple. The motion is denied.

Mr. Albert: Exception. Examiner Averill: Noted.

By Mr. Haycraft.

O. Calling your attention to the last paragraph of these minutes, Commission's Exhibit No. 14-B, as it says here, it says that: "On motion made by Mr. Felix Lilienthal and seconded by Mr. Weill that a committee be appointed from the resident buying offices to meet with a committee of the Fashion Originators Guild to propose plans whereby the buying offices and manufacturers could co-ordinate. their efforts in fighting piracy, and that after this committee had a policy formulated, to call another meeting of 11582 the resident buyers. The motion was carried and the following committee of resident buyers was appointed." Then there appears a list of names and on this list of names appears, among others, Mr. John Block, of Kirby, Block & Fischer. Does that refresh your recollection as to a joint meeting of resident office buyers and members of the Fashion Originators Guild of America shortly after February 17, 1933? A. No. That does not refresh my I am not sure whether I was there or whether it was one of my associates. I know somebody was present, but I am not sure.

Q. All right. Subsequent, now, to February, 1933, when did you next hear, or did you hear anything further from the Fashion Originators Guild of America, or of its activities? A. Yes, sir, we read articles in the trade papers and also saw some letters that had been transmitted to our retailers. We also had a meeting, I recall, at Miss Glemby's office, Miss Rose Glemby of the Mutual Buying Syndicate.

Q. Who is she? A, She is the head of the Mutual Buying Syndicate or association-Mutual Buying, I think it is Association.

Q. Is that another buying office? A. That is a buying office similar to our own.

Q. I show you Commission's Exhibit No. 99 A to E, both inclusive, over the signature of Maurice Rentner, with Certain attachments, memoranda and Guild resolutions, and also a copy of the declaration in regard to antipiracy, and ask you if you have seen this paper or papers comparable to that exhibit which letter is dated June 16, 1933? A. I recall such a letter. Whether this is an exact copy of it, or, whether this is the exact letter or not, it would be hard for me to say, but I recall a letter being sent to retailers to which was attached the F.O.G.A. declaration of acceptance—the declaration of co-operation.

Q. Well, at the meeting that you refer to, later on, in Miss-Glemby's office, do you recall who, besides yourself, was present at that meeting?

Mr. Albert: May I ask that you fix a time? Examiner Averill: Yes.

By Mr. Haycraft.

Q. And when it was? A. The meeting was held some time just about the time when we first started to hear about the Fashion Originators Guild of America, but I do not recall the exact date except to say that it was in the earlier part of 1933. Whether it was in April, May or June, I do not know. I do not remember at this time.

Q. Was it before or after you have or had seen this letter that I have now called your attention to, dated June 16, 1933? A. I will say that it was a little before, but I cannot swear to it. My recollection was that it was slightly before.

Q. Who was present at that meeting besides yourself?

A. There was present for the manufacturers Mr. Maurice
Rentner and Mr. Herbert Sondheim, and Mr. Golby was
present and Mr. Louis Brenner, and perhaps one or two

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ther manufacturers, I do not remember their names. Ind for the buying offices there was present Miss Glemby t whose office the meeting was held, Mr. Bergdahl, Mr. Greenebaum and, I am not sure but I think, Mr. Lilienhal, Mr. Greenebaum's associate, was also there and omebody was present from Wile & Hartmann, I am not are whether it was Mr. Wile or Mr. Gaynor, and Mr. Swinney, I believe, was there and I think Mr. Arthur ippmann was there and perhaps one or two others that do not recall now.

Q. Do you know who called the meeting? A. Why, I do not remember whether the meeting was called at the instigation of Mr. Rentner, or at the instigation of Mr. Bergdahl, or at the instigation of myself, I am not sure. It was called by agreement between the two groups, however.

Q. What was the subject-matter of discussion at this neeting? A. The matter under discussion was the question of co-operation of buying offices with the plan of the Fashion Originators Guild of America. Mr. Rentner, also, gave us an outline of the Fashion Originators Guild of America and what it stood for and what it meant to accomplish.

Q. What did he say with respect to that? A. Well, he told us the hardships suffered by the manufacturers of better dresses through the copying of their styles promiscuously and the selling of such styles throughout he country and he said that they meant to—the Fashion originators Guild of America meant to curb that evil and that they hoped to get the co-operation of retailers hroughout the country and the buying offices representing such retailers, as well. Briefly, that was the theme.

Q. Did he say anything about what he expected the realers to do in that co-operation? A. Yes, sir. He expected that they would refrain from buying copies of original models.

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Q. Anything else? A. Well, as I said, that is briefly, do not know what other—

Q. Well, to refresh your recollection-

Mr. Albert (interposing): Well, if it please the Court, I object to Mr. Haycraft refreshing the witness' recollection through Mr. Haycraft's state ments of anything he thinks may have occurred I think the witness is perfectly capable of telling us what he remembers of what occurred there.

Examiner Averill: All right, I do not thin there is any objection to him seeking to refresh—

11591 By Mr. Haycraft.

Q. Was there anything said about the retail dealer returning to manufacturers copies of merchandise of Guild garments, of garments manufactured by Guild members? A. Well, as part of the program, it was state that retailers would be expected to return such copies, not to buy copies, and if they were discovered to be copie then they were expected to return them to the manufacturers of those copies.

Q. Did anyone speak for the retail dealers presen

with respect to this program? A. Yes, I believe a number of us spoke, including myself: We asked Mr. Rental how he would protect the retailers who were sympathet with the F.O.G.A. idea, as regards to lower-price garment that were copies, were handled by chain stores, who migh not be signatories to the F.O.G.A. agreement, and we would sell these garments by the thousands, where the other type of retailer, our type of retailer, for instance was proscribed from selling that same merchandise, and then followed a long discussion in which some of the manufacturers, as well as Mr. Rentner, took part, and representations.

sentatives of buying offices, and, oh, it must have been

after, about two or three hours, we finally came to this agreement that—

Mr. Albert (interposing): I object to any conclusion of the witness, if it please the Court, as to what agreement there was, and ask that the witness be restricted to telling us what was said.

A. Mr. Rentner said any dress or dresses costing \$6.75, and under would not be considered a copy of a Guild—of any Guild design. The buyers present agreed that that would be satisfactory. That is the agreement I refer to.

Mr. Feldman: This was in 1933, Mr. Block? The Witness: Yes, sir.

11594

By Mr. Haycraft.

Q. At that time, now, what price lines were the members of the Guild manufacturing, cost price lines? A. Well, at that time, the Guild members were making dresses costing \$22.75 and upwards; a few were selling as low as \$16.75; not many.

Q. After this meeting, did you communicate the understanding that you had arrived at with Mr. Rentner to the store that you represented, or did you make any recommendation to the stores? A. I believe we did get out a circular type of a letter, but I have no copy of it, because, we do not save those; after a few months we destroy them. We get out so much of this mimeographed literature we cannot save it.

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Q. Were you asked by the stores that you represented for an opinion or a recommendation as to their signing the so-called "Declaration of Co-operation" to which I directed your attention and which you referred to in your testimony a moment ago, Commission's Exhibit 99? A. We were asked by a good many stores, and we recommended that they sign, and where they asked us what

would happen on lower-priced dresses we assured them that they would have no trouble, and we thought that the principa as a whole was good, and that they should sign, and, in fact, we obtained such signatures right in our place on the blanks furnished to us by the F.O.G.A., and then we would send on those signed acceptances of declarations to the F.O.G.A.

- Q. Did you as a buying office sign any such declaration of co-operation? A. Yes, sir; we did.
- Q. Subsequent to June, 1933, did you co-operate with the F.O.G.A. in its program as you understood it at that time? A. Yes, sir.

11597

- Q. Did. you ever learn, or was your attention directed to an occasion when the membership of the F.O.G.A. was to be expanded or enlarged to include \$10.75 cost manufacturers? A. Yes, sir.
- Q. When did you first learn of that? A. I do not know the date, but I remember the occasion. There was such an occasion.
- Q. I now show you Commission's Exhibit 862, which is a letter from H. I. Kleinhaus, executive secretary of the Association of Buying Offices, Inc., addressed to Maurice Rentner, chairman, Fashion Originators Guild of America, dated March 30, 1935, and ask if that will refresh your recollection as to when you first learned that the \$10.75 manufacturers were to become members of the Guild? A I remember that; yes, sir.

- Q. Does this letter refresh your recollection as to the time when you first learned that the \$10.75 group of manufacturers— A. Yes, I believe it was about that time.
- Q. —were to go in the Guild? A. Yes, it was about that time, I believe.
- Q. Would you say it was around or about March, 1935?

 A. Judging from the date of that letter; yes, sir.
- Q. This letter, the Association of Buying Offices, Inc.-do you hold any position in that organization, or have

you held any position in that organization? A. I was president of it until recently,

- Q. How long a period were you president of it? A. Three years—that is, from its inception until, I think, October of this year.
- Q. When was it organized? A. It was organized in the fall of 1933.
- Q. Will you briefly describe, just briefly, the nature of that organization, what it consists of?

Mr. Albert: Are you talking of the A.B.O.? Mr. Haycraft: A.B.O., yes.

A. This organization was formed about the time that so many questions arose as to what was right and what was wrong under the N.R.A. rulings, and we thought rather than have spasmodic meetings at luncheon tables and so on, that it would be a good thing to form this organization and go along with the N.R.A., because we felt that sooner or later we would be called upon to draft our own rules of fair trade practices, and so on. So we thought that was the opportune time to form this organization, and exchange views and ideas, so on and so forth. Now, the purposes of the organization—although that was the cause of its organizing, I would say that the purposes are mainly for an exchange of ideas and views, concerning matters having to do with buying office activities.

Q. Who belonged to it? A. About twenty-five buying offices of New York City.

- Q. Are they the leading ones, would you say? A. I would say that they compose practically all the leading offices.
- Q. The Associated Merchandising Corporation with which Col. Reilly and Mr. Bergdahl are associated, did they ever join your organization? A. They joined, but they told us that it must be understood that full member-

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ship wou'd be subject to the approval of their board. They contributed to the cause, which was a hundred dollars per annum, for the upkeep and running of the organization, and I do not believe that up until now they have had that board consent, but in spirit they are with us.

Q. They have never taken any formal action? A. No. but they were very active at all our meetings. They were attended by either Mr. Bergdahl, or Mr. Chambers, some times by Mr. Kelly, when it had to do with other lines of merchandise, sometimes by Mr. Reilly.

Q. This exhibit that I have called your attention to, referred to Mr. Kleinhaus. Who was H. I. Kleinhaus. What firm was he connected with? A. Mr. Kleinhaus acted as executive secretary for the Association of Buying Offices.

Examiner Averill: What is the number of the exhibit you speak of, please?

Mr. Haveraft: 862.

Examiner Averill: Thank you.

By Mr. Hayeraft.

Q. Did Mr. Kleinhaus discuss with you, or show you this letter before or after it was written to Mr. Post (handing witness Commission's Exhibit 862)? A. Let me see, March 30, 1934. Yes, that was discused at a meeting of the Association of Buying Offices.

11604 Q. Was this letter authorized by that meeting? A. Yes, that was authorized.

Q. I call your attention to Comission's Exhibit 862: "We take it for granted that 'invitation' to style registration on the basis offered to \$10.75 manufacturers is not synonymous with membership in the F.O.G.A. and, therefore, is only optional or binding on retailers who have signed agreements with you. In connection with this subject also we should like to call to your attention that the

agreement how in effect with retailers is not binding below \$7.75 cost either by a stipulation so written in the original contracts with many retailers or by a verbal understanding between the A.B.O. and the F.O.G.A. to which you openly agreed at one of our joint meetings. This mutual agreement has never been changed.

"We do not wish to be misunderstood. We are and have always been in sympathy with your purpose of style protection. As a practical matter, however, we feel it is unwise for you to attempt, at this time, to assure style protection to signatory retailers or to your members against merchandise costing below \$7.75 cost since there are many retailers dealing almost exclusively in low end goods who have not signed with you and over whose purchases you have as yet devised no means of control. We refer particularly to mail orders concerns and specialty apparel chain stores." I call your attention to the \$7.75 cost mentioned in that quotation. A. Does it say below \$7.75?

Q. Yes. A. Well, that would mean \$6.75 and under, because there is no cost in between the two.

Q. Well, at the time that—in June, you see this was in 1935. A. Yes.

Q. In June, 1933, were there any \$7.75 cost manufacturers, to any extent, in this market? A. As I recall, the price line would jump from \$6.75 wholesale to \$6.75. If there were any made at \$7.75 or \$8.75, they must have been mighty few at that time.

Q. Did they come in more numerous later? A. Yes, today there are a great many of them.

Q. Yes. Were meetings held, joint meetings with the A.B.O. and representatives of the Fashion Originators Guild subsequent to March 30, 1935, to your knowledge? A. I believe so; yes, sir.

Q. Did you attend any of those meetings? A. I attended some, and others were taken care of by a committee that was appointed to deal with F.O.G.A. matters.

11606

Q. Who constituted that committee—that is, who made it up? A. There was Mr. Bergdahl, Mr. Greenebaum, and I think Mr. Sweeney. I believe that was all.

Mr. Albert: Would you mind repeating those Mr. Block?

The Witness: Mr. Bergdahl, Mr. Greenebaum and Mr. Sweeney.

Mr. Albert: They represented the A.B.O.? The Witness / They represented the A.B.O.

Mr. Feldman: A committee appointed to deal with F.O.G.A. matters.

11609 By Mr. Haycraft.

Q. Was Mr. Kleinhaus also on that committee? A. He might have been ex officio.

Q. That was on account of his office as secretary— A Yes, that is, to taking records, and so on.

Q. I now show you Commission's Exhibit 866, which is a carbon copy of a letter from Mr. Kleinhaus, as executive secretary, to the Association of Buying Offices, Inc., addressed to Mr. Maurice Rentner, chairman of the Fashion Originators Guild of America, dated April 27, 1935, and ask if you can identify that in any way, or whether you have seen it or known anything about it (handing exhibit to witness)?. A. Yes, that seems to be in line with what was being discussed at those meetings.

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- Q. Did you see the original of this letter before it was mailed? A. Possibly, I am not sure. Sometimes he would send me the letters for my O.K. and sometimes he would just tell me what was in it, briefly.
- Q. Do you have an independent recollection of the subject-matter of the letter? A. Oh, yes, yes, sir.

Examiner Averill: Is that Exhibit 861?

Mr. Albert: 866,

Mr. Haycraft: Commission's Exhibit 866.

By Mr. Haycraft.

Q. I now show you Commission's Exhibit 871, which is a carbon copy of a letter from Mr. Kleinhaus, executive secretary of the Association of Buying Offices, Inc., addressed to Mr. Bertram Reinitz?— A. R-e-i-n-i-t-z.

Q. —151 West Fortieth Street, dated May 13, 1935 and ask you if you can identify that in any way? A. Yes, I know that that subject was discussed and that seems to be in line with the discussion.

. You mean that is— A. That had to do with some period of leniency, mostly.

Q. Mr. Block, I call your attention to this statement appearing in Commission's Exhibit No. 862, to which I directed your attention a moment ago, being the letter of March 30, 1935: "In connection with this subject also we should like to call to your attention that the agreement now in effect with retailers is not binding below \$7.75 cost either by a stipulation so written in the original contracts with many retailers, or by a verbal understanding between the A.B.O. and the F.O.G.A. to which you openly agreed at one of our joint meetings. This mutual agreement has never been changed." Now, I ask you, Mr. Block, whether there was any change in the agreement or understanding as a result of the discussions which you had, or your representatives had with this F.O.G.A. committee and A.B.O. and officers of the Guild subsequent to March, 1935?

Mr. Albert: Same objection.

Examiner Averill: Overruled.

The Witness: You say subsequent to March, 1935?

By Mr. Hayeraft.

Q. Yes.

Examiner Averill: Was there any change subsequent to that time?

The Witness: Was there any change of what?

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By Mr. Haycraft.

Q. In the agreement or the terms of the agreement.

Mr. Feldman: He has never testified that that was an agreement. How can be testify that it was changed?

Examiner Averill: This is in the letter which is clearly before us and which he has read and now he is testifying as to whether there was any change in it.

Mr. Feldman: He has not stated that they arrived at any agreement.

Examiner Averill: He read it.

The Witness: There was no change as far as the —as far as the price limit was concerned; that is \$6.75 or any other, except that some time after Mr. Post was made managing director of the Fashion-Originators Guild the question came up as to modifying the understanding that we had had up to then as to copies, and so forth, in the lower, priced ranges. The A.B.O. and particularly Mr. Bergdahl, as I recall, was willing to work along the F.O.G.A. provided that in doing so some solution might be arrived at whereby neither the retailer nor the manufacturers—that is, neither the retailers who signed with the F.O.G.A., nor the manufacturers of the F.O.G.A., or their affiliates in the \$10.75 group, would suffer. It was a very difficult problem, I will admit, and I think everybody else will, and we have not solved the question yet.

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11615

By Mr. Haycraft.

Q. Was there- A. What?

Q. When did the \$10.75 manufacturers become members of the Guild, if you recall? A. Well, I do not know as

they became members of the Guild proper. I think that their Association affiliated; as an association, with the Guild. In other words, the \$10.75 manufacturers, as I understand it, the single manufacturer, is not an out and out member of the F.O.G.A. as an individual manufacturer.

Q. That is, they are members of the Dress Creators' League? A. They are members of the Dress Creators'

Leagué.

Q. When they became associated with the Guild in any way, that is the only time— A. I did not understand you.

Q. When did they become associated with the Guild—that is, when did they set up, as far as registration was concerned of their garments— A. Well—

Q. If you recall. A. I do not understand just what you

mean.

Q. Some time subsequent to this date. A. The records would show for themselves. There are records, newspaper records, and so forth. I do not know. I believe it was in 1935 some time, if I understand your question.

Mr. Albert: I do not understand the question at all.

Examiner Averill: I do not, either, but apparently the witness does.

By Mr. Haycraft.

Q. Referring again to Commission's Exhibit No. 871, to the paragraph reading as follows: "We should like to have you, as representing the \$10.75 dress manufacturers, and Mr. Post of the Fashion Originators Guild, approve the following slightly amended understanding as drafted from the minutes of the May 4 meeting, and acted upon by our members at their meeting on Friday, May 10, 1935:

"The Guild's plan to extend style piracy protection to the \$10.75 dress manufacturers was discussed with the aim of developing a practical procedure. 11618

"It was agreed that it could hardly be expected, for some months at least, that the low priced market would be able to adjust itself to style origination. For this reason, it was decided that during the period which would be required to develop the production of a sufficient volume of goods in the lower price field made from original designs, and so long as non-signers were still buying copies in considerable volume, the Guild would be lenient with respect to their requirements, that copied merchandise be returned." My first question is: What price was included in this group of lower-priced manufacturers, or in the lower-priced field? A. \$6.75 and under at wholesale.

11621

Q. My second question is: What was the contemplated period of leniency? A. This expression "period of leniency" really was originated between Mr. Bergdahl and Mr. Post, and I did not know how long a period that would be. It would only be a guess on my part.

Examiner Averilf: Do not venture à guess. The Witness: I could not state.

By Mr. Haycraft.

Q. The last part of this letter that you suggested be sent reads as follows: "Accordingly, the committee agreed that the Guild should extend protection to the \$10.75 dress manufacturers, and that the conclusions contained in the minutes shall be put forth in a letter to be sent by the Guild to all retailers." Do you recall the particular phrase that I have just called your attention to? A. I recall that that happened and we agreed to it.

- Q. Going back just for a moment to 1933, Mr. Block, did your buyers contact regularly the manufacturers in this area that were members of the Guild? A. Yes, sir.
- Q. In June, the latter part of June, 1933, did they make any reports to you with respect to their ability to be allowed in the showrooms of the Guild manufacturers? A.

Well, they told me that the buyers of the cheap merchandise—that is, merchandise costing \$10.75 and under that was known at that time as the "cheaper merchandise," would not be permitted in the Guild showrooms. Whether that was a permanent thing or not I do not know, but that was the report that no buyers whose firms had not signed with the Guild would be permitted in the F.O.G.A. showrooms, and I assured them that they had nothing to worry about, that we would go along with whatever our retailers wanted to do, and that if the large majority of our retailers wanted to follow along with the Guild, why, I would go along, which we did. So, after these discussions, and so forth, we signed with the Guild and the buyers bought the merchandise then, and thereafter at the Fashion Originators Guild of America showrooms.

11624

- Q. To your knowledge, have any of the stores for which you buy in this market been red parded by the F.O.G.A.?
 A. Not—any of our stores?
- Q. Yes. A. To my best knowledge, none of them have been red carded, none of our stores.
- Q. Have any of them been shopped by shoppers of the Fashion Originators Guild of America? A. Yes, sir; lots of them.
- Q. Do you know, just in a general way, which ones, by city, say? A. Oh, Baltimore, Washington, Houston, Texas; some in the Middle West, some out as far as the Pacific Coast; I do not recall all the names; I would say that in the medium and larger cities they were pretty well shopped.

- Q. Do any of your stores have what is known as basement stores? A. Yes, sir; quite a few of them.
- Q. Approximately how many would you say? A. Well, I would say approximately fifty.
- Q. Do you know whether or not those basements are being shopped by Guild shoppers? A. Those basements are shopped, and upstairs' stores are shopped also.

Q. What is the general division in a group of stores as to price line of garments sold in basements as compared with upstairs' stores?

Mr. Albert: What is the question?

· Q. (Question read.) A. There is no general division a

The better store may sell dresses retailing a

\$10.95 and under in the basement; the cheaper store might not sell dresses retailing over \$4.95 in the basement, mayber \$3.95 and under. It all depends on the type of store Some department stores will sell \$5.95 dresses on their main floors; some of them have budget shops on their main floors, which they term "budget shops," which sell popular priced dresses, and some of them have on their main floors shops which they call college shops, or campus shops, and so forth. It all depends on the type of store as to what

price marks the beginning of the basement dresses.

By Mr. Haycraft.

Q. Do your stores which operate basement stores, an which have been shopped by shoppers of the Guild, been required to return garments cost price below \$6.75 to the manufacturers when adjudged copies? A. Sometimes yes, sir; sometimes.

(The paper heretofore marked for identification Commission's Exhibit 943, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

(The paper heretofore marked for identification Commission's Exhibit 944, was marked as an embiliary and received in evidence.)

11627

(The paper heretofore marked for identification Commission's Exhibit 945, was marked as an exhibit and received in evidence.)

(Whereupon, at 4.30 o'clock P. M., December 3, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway, New York, N. Y., December 4, 1936.

11630

Met, pursuant to adjournment, 10 A. M. E.S.T.

Before: EDWARD M. AVERILL, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Proceed.

Mr. Haycraft: Mr. Block, if you will resume the stand.

JOHN BLOCK resumed the stand and testified further as follows:

11631

Direct examination (continued) by Mr. Haycraft.

Q. Do you have any recollection, Mr. Block, of discussing with officials of the F.O.G.A. the matter of certain trade practices that they had agreed to discontinue during the year 1935? A. There were some discussions with some of the officials of the Guild on account of the propriety of trade practices entering into the Guild activities.

There seemed to be doubt as to whether or not fair trade practices had anything to do with the Guild which many of these buyers believed had been formed in the interest of style protection only.

- Q. Do you have a recollection of when these discussions took place? A. I think it was in the summer of 1935.
- Q. Do you have any recollection of who attended the meetings that you referred to, and the discussions? A. No, I do not know that I can say exactly now unless I saw some minutes or something of that kind.
- Q. Referring to Commission's Exhibit 34, minutes of the meeting which took place on Friday, June 21, 1935, I will ask you whether or not that refreshes your recollection as to when the meeting was held, and who attended it? A. Yes, I remember the meeting. This seems to be approximately correct. This is a report of the meeting.

Q. Does that coincide with the list of manufacturers—A. As far as I remember, yes.

Q.—and their representatives who were present? A. Yes.

Q. Do you have any recollection as to who—do you have any recollection as to what were the so-called unfair trade practices that were discussed at that meeting? A. Well, the question of discounts, the question of submitting merchandise to group showings and some other items that I do not remember were discussed, and Mr. Rentner tried to point out to us that what they had in contemplation was for the good of the industry, and at the same time, I believe, he assured us that nothing would be done without giving the retailers a chance to state—to sit in at the open hearings when any further trade practices were under discussion, fair trade practices.

Q. To refresh your recollection on this matter, of what constituted unfair trade practices from the Guild's standpoint, I will ask you whether or not the practice of selling— A. What?

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- Q.—of selling garments on consignment was mentioned or discussed? A. Probably.
- Q. Do you have any recollection of it? A. I think it was. This seems to be—that is one of the subjects that come up regularly when fair trade practices were discussed with them, or any other organization.
- Q. I will also call to your attention the practice of making exchanges of merchandise and/or returns? A. Well, I mentioned returns before, or intended to. I think the showing of garments by manufacturers at retail functions—that is, at retail stores, or in retail offices, particularly Yew York, was also discussed.
- Q. What was that practice? A. What?

Q. What was that practice? A. Well, for many years some manufacturers would send out merchandise to retail stores enabling them to gather their customers at a so-called fashion store. This would help retailers to sell more merchandise from the samples shown on live manikins.

Mr. Feldman: What is the date of these meetings?

A. And incidentally, would create a certain amount of prestige for the store by reason of the Lishion side of the show. That is one of the trade practices that were discussed as to the Guild which they wanted discontinued, and had passed a ruling to the effect that that should be discontinued. And the other fair trade practice regarding showings of merchandise to retailers' representatives—that was a subject which was discussed, another subject which was discussed. At such a showing usually a number of out-of-town retail buyers gathered to get a bird's eye view of the new fashions on the market. They could get a good cross-section as to what is being shown with the least possible loss of time. Manufacturers of the Guild argued that that did not help their business, but rather retarded it, and so forth, and that was another so-called

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fair trade practice that was included in the program for discontinuance.

Mr. Albert: May I ask the indulgence of the Court to ask that the answer be read back, because it was given so jerkily and so rapidly that it was rather difficult to follow it.

Examiner Averill: Read the answer back.

(Answer read.)

Examiner Averill: I notice that the witness said "another so-called fair trade practice." Did you mean that?

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Mr. Albert: That is what he said, as I recall it. The Witness: Yes, but that was my error, it should be unfair trade practice, I meant that it was something that was to be the subject of fair trade practice regulation.

By Mr. Haycraft.

Q. What was the position of the retailers with respect to these so-called unfair trade practices that you have just referred to? A. Well, the representatives of the retailers present at that meeting seemed to be of the opinion that those matters, or at least a great many of them, were not unfair trade practices, but were fair trade practices that could very well be continued without detriment to the Fashion Originators Guild of America.

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Mr. Albert: I ask the answer be stricken out a not responsive and it being a conclusion rather than a recitation what was said by the various people there.

Examiner Averill: Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Haycraft.

Q. Was any expression made as to whether or not these practices were advantageous to the retail dealers? A. I thought I answered that.

Examiner Averill: Is that not included in the answer already given?

The Witness: That is just what I said. I said they thought that it was a fair trade practice.

Examiner Averill: No, no.

The Witness: Excuse me.

By Mr. Haycraft.

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- Q. Subsequent to that meeting, did the Guild submit to the retail dealers various resolutions that had been passed by the F.O.G.A. with respect to so-called unfair trade practices discussed at that meeting? A. I believe so; yes, sir.
- Q. I show you Commission's Exhibit No. 540-A and 540-B, a two page letter from Mr. Post, this is numbered, to Mr. Ralph T. Friedman, being a mimeographed letter dated July 1, 1935, and ask if this is such a letter as you have in mind? A. Yes, I think I remember that.

Q. Since that time, since July 1, 1935, have you had any further discussions with the officials of the Guild with respect to the enforcement of these rules and regulations with respect to so-called unfair trade practices?

Mr. Albert: I did not hear the question.

Examiner Averill: Read it.

(Question read.)

Mr. Albert: Thank you.

By Mr. Haycraft.

Q Answer the question. A. Now, just what is the question?

Mr. Haycraft: I ask that the question be read. Examiner Averill: Read it.

Q. (Question read.) A. I do not know as I had, personally, any discussions with the Guild, but these matters were in the hands of the committee acting for the Association of Buying Offices. This committee was the F.O.G.A. trade relations committee which we spoke of at yesterday's chearing.

By Mr. Haycraft.

- Q. Of which Mr. Bergdahl was chairman? A. He was 11645 chairman, yes.
 - Q. Did the committee report to you from time to time as to the discussions that they had with the Guild on these matters? A. Yes, sir; but as to the dates and the exact items I do not remember at this time.
 - C-Q. Do you know, as a matter of fact, whether or not these rules and regulations have been enforced by the Guild since that time? A. I would like to have them again—I would like to see them again if I might.
 - Q. Here they are. A. I think substantially they have been enforced; possibly in some instances they might not have been.
 - Q. Has there been any discussion, to your knowledge, of the enforcement of these rules and regulations between this committee, that you referred to, and officials of the Guild, or has the enforcement of these rules been a matter of discussion between the committee and members of the Guild? A. There has been discussions, as I said before, but I am a little hazy as to the dates and items discussed.
 - Q. In your testimony yesterday, you referred to the extension of the Guild program to include the \$10.75 cost manufacturers. A, Yes.
 - Q. I will ask you whether or not you recall any further extension of the Guild program to include the \$6.75 and

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the \$7.75 and the \$8.75 cost manufacturers, respectively? A. Yes, that did happen.

. Q. It did happen? A. Yes.

Q. Do you recall when that took place? A. Subsequent to the time that the \$10.75 affiliates was joined up with the Guild.

Q. Can you give us any better date than that? I am afraid not unless I have some records to go by.

Mr. Albert: We will probably furnish them for you, Mr. Block, for your convenience.

The Witness: That will be nice.

By Mr. Haycraft.

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Q. I show you Commission's Exhibits 528-A and B, being a letter from Mr. Post to Mandel Brothers, Chicago—no, New York City, dated November 6, 1935, and ask if that will refresh your recollection as to the date of the inclusion of the \$6.75, \$7.75 and \$8.75 manufacturers in the Guild program in or under the general title of Protective Affiliates? A. That is probably about the time, November 6, 1935, as I recall it, Mr. Haycraft.

Q. About the first of November, 1935? A. I believe so; yes, sir.

Q. Or immediately prior thereto? A. That is probably correct.

Q. To your knowledge, was the F.O.G.A. committee of the Association of Buying Offices consulted with respect to this expansion of the Guild program to include the \$6.75, \$7.75 and \$8.75 manufacturers? A. I believe they did have some conversations on that subject; I do not know whether or not they consulted them before they decided on this move or not, but there was some conversation on it.

Q. Do you recall at or about that same time that there was also an attempt made by the Guild to take in the \$4.75 garment manufact .rers? A. I believe there was, later on.

Q. Later on? A. Yes, sir.

Q. Was that attempt successful—that is, did the \$4.75 manufacturers affiliate themselves with the Guild? A. I believe not.

Q. Do you have any recollection of any discussions that

you personally had in the fall of 1935, as representing your firm and the organizations that you buy for, with officials of the Guild, with respect to the policy of the Guild in requiring returns on the part of retail dealers whom you represented, of garments that were judged to be copies of Guild merchandise? A. I don't remember any particular discussion. We always maintained that the retailer who had signed up with the Guild and was trying to live up to his agreements and obligations under that agreement, was at a handicap, because of the fact that stores that had not signed up, particularly the popular priced chain stores, had on outlet for thousands of dollars, probably millions of dollars of merchandise, which the retailers who had signed with the Guild were proscribed from receiving or selling.

By Mr. Haycraft.

Q. Well, you say you maintained that. Did you mean you maintained that to the officials of the Guild? Did you tell them about that? A. Well, we always maintained that our retailers who had signed had not—I would say were not in a favorable position as far as the selling of the cheaper merchandise was concerned, in spite of the fact that we, representing our retailers, and we know that most of our retailers were in sympathy with the Guild plan, in principle, if it could be worked out equitably, as far as the retailer is concerned.

Q. Well, now, after the \$6.75, \$7.75 and the \$8.75 cost manufacturers became affiliated with the Guild, and participated in their program, was there any modification made, or change made, in the understanding and/or agree-

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ent that you referred to yesterday in your testimony as exemption for \$6.75 merchandise from the returned—om the requirement to be returned?

Examiner Averill: From the requirement?

Mr. Haycraft: From the requirement on the part of the Guild.

Examiner Averill: From the requirement of returns?

Mr. Haycraft: Yes.

A. There was some modification, but I do not know mether that letter had any bearing on modification, or the there that letter caused the modification. There was 11654 ome modification later.

Examiner Averill: When the witness says "that letter," he refers to Commission's Exhibit 525?

Mr. Albert: '528.

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. What was the modification? A. Well, the question rose as to whether some retailers were not suffering too everely by reason of returns being ordered by Mr. Post, it his assistant, Mr. Goldston, and two or three of us alled on Mr. Post one day on that subject, and he told us hat it would be agreeable in the case of retailers who were abjected to unusually large returns, thereby hurting their usiness to a great extent, to limit those returns so that hey would not go beyond a fixed percentage of the total number of garments carried in their dress departments. Q. What was that fixed percentage that he mentioned? As I remember it, the percentage of returns need not acced 3 per cent. of the entire dress department; that is, he higher and lower price, or not to exceed 5 per cent. of the popular priced department.

- Q. By "popular priced," you mean lower brackets? A. Lower brackets. Well, I believe we agreed also not to make this public, the reason being given by Mr. Post that lower-priced manufacturers should not take undue advantage of the situation, and also that retailers should not take too much advantage of it; but it was sort of a gentleman's understanding, and we treated it as such.
- Q. Was anything said at that conference with respect to the formal agreement, or understanding, that you had with Mr. Rentner as to— A. Well, we always referred to that agreement right along, but, of course, as far as Mr. Post was concerned, he disclaimed all knowledge of that be cause he was not connected with the institution at that time, and was not present at that meeting—that is, the meeting that I referred to in 1933 at yesterday's hearing.

Q. Did Mr. Rentner ever repudiate the agreement or understanding that you had with him in that respect? A. He never did, so far as I know,

Q. How long a period of time did this last gentleman's arrangement or agreement that is referred to that you had with Mr. Post continue? A. I do not know exactly how long, but I do remember that some time afterwards, it might have been a matter of months, in recalling to Mr. Goldston this 3 and 5 per cent. agreement, or understanding, that we had with Mr. Post, he told me that was off.

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Examiner Averill: Who told you that?
The Witness: Mr. Goldston.
Mr. Haycraft: Mr. Goldston.
Examiner Averill: Yes.

By Mr. Haycraft.

Q. It is not in effect, then, at the present time? A. I far as I know, it is not.

Q. Have you had any-

Examiner Averill: One moment, please, first, let us find out, if you do not mind, whether this conversation with—Mr. Goldston?

The Witness: Mr. Goldston, Jack Goldston.

Examiner Averill: Whether that was prior to the red carding of the A.M.C. stores, which has already been testified to, or if it was subsequent to that.

Mr. Haycraft: I will be glad to have that question asked.

Examiner Averill: I want to fix the time, and he did not give it. This conversation that you speak of with Mr. Goldston?

Mr. Haycraft: All right.

Examiner Averill: You have heard of the red carding of certain A.M.C. stores, have you not?

The Witness: Yes, sir.

Examiner Averill: And you know approximately what that time was? If not, I can have your recollection refreshed as to that date.

The Witness: I would like to know the date.

Examiner Averill: Let me see those exhibits.

Mr. Haycraft: February 17.

Mr. Martin: February 17, 1936.

Mr. Haycraft: That is when the formal notice went out. There were a couple before that.

Examiner Averill: Now, then, was this conversation with Mr. Goldston prior to that, or after that?

The Witness: After.

Examiner Averill: After that red carding?

The Witness: Yes.

Examiner Averill: Thank you.

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By Mr. Haycraft.

Q. Mr. Block, have you had any discussion with either Mr. Post or Mr. Goldston since November, 1935, asid from the one that you have referred to a moment ago, with respect to the returns that the stores that you represent are required to make under the rules, in co-operating with the Guild? A. As far as I recall in the last sever months, that is during 1936, I have had very few discussions, except where we received notices of a general nature, the regular bulletins, asking us to inquire of our buyers if certain alleged copies had been purchased from certain manufacturers, and, if so, to advise the Guild, and

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also to notify our retailers to return those copies immedately. That was generally the type of discussion on maters pertaining to these bulletins. If there were anothers, I do not recall them at this time.

Q. Have you received any instructions from officials of the control o

the Guild with respect to certain manufacturers you have designated as confirmed copyists? A. Yes.

Q. When did you receive such instructions? A. We received these bulletins from time to time. They were in the shape of illustrations, description of garments, names the manufacturer who was the alleged copyist, the name the manufacturer that originated the style, and usual accompanied by a letter advising us what to do.

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Mr. Albert: Now, if it please the Court, I more that the answer of the witness be stricken out a not responsive to the question. The question was a very simple one, "When was the time you received them?" The answer would have been, sinch he cannot give a specific time, "From time to time Then I could have make an objection to the nequestion of Mr. Haycraft, which Mr. Haycramight have put, as to the substance of that, at the bulletins would have been the best evidence.

what was received by this man. He is volunteering this information without even a question put by Mr. Haycraft, precluding me from objecting to the question on the ground that the information is not the best evidence. I move that everything be stricken out after the answer "From time to time."

Examiner Averill: Read the question and the answer.

(Last question and answer read.)

Examiner Averill: The objection is overruled; exception noted.

Mr. Albert: Exception.

By Mr. Haycraft.

Q. Did you ever receive any instructions from officials of the Guild referring to certain manufacturers that were not to be bought from because they were confirmed copyists?

Mr. Albert: Now, if it please the Court, as a result of this witness volunteering information not in response to a question, I have got to object to preliminary questions which are forming the foundation for what Mr. Haycraft wants to get at.

Examiner Averill: All right.

Mr. Albert: I must object to the question on the ground it calls for a conclusion of the witness as to whether or not certain instructions given him were instructions; further, on the ground the best evidence is the person giving it, or, if it is in writing, the instruments bearing the instructions, or the information, whatever it is that Mr. Haycraft wants. I do not know, but I cannot take any chances any further that this witness is going to give proper answers to questions, and answer "yes" or "no" to foundation questions, and I am going to have to object to everything Mr. Haycraft asks.

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Examiner Averill: All "ight, if you do just make your objections and the we will make a ruling and go on; but so far as this question here is concerned I have so little notion in my mind as to the word "instructions" that I would like to ast the witness to state if these—whatever he received—if it was in the form of instructions, or was it just in the form of information, or was it reporting actions that had been officially taken by the Guild or its representatives. That is what I am trying to find out.

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A. Well, I suppose the right word would be "requests," requests. We were asked to do it that way.

By Examiner Averill.

Q. That would be the general form in which the things, whatever they were, took? · A. Yes, sir. That would be the general form in which these things took.

Q. They stated certain people had done certain things, and then you were requested to do certain things, or not to do certain things? A. Yes, sir.

Q. Is that the general nature of these things? A. Ya. sir.

Q. Or policies? A. Yes, sir.

Examiner Averill: With that understanding as to what the witness means as to the word, I think we can proceed.

Mr. Albert: I renew my motion to strike the apswer on the ground that it calls for the conclusion of the witness and the proper basis has not been laid for that.

Examiner Averill: Overruled.

Mr. Albert: Exception.
Examiner Averill: Noted.

Mr. Albert: Thank you.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: I think the witness can answer that question with the modification.

Mr. Haycraft: I will ask, with the modification, that the witness answer the question.

A. I would say that they received such requests—that we received such requests from Mr. Goldston at times.

By Mr. Haycraft.

Q. Do you have any recollection as to the names of the manufacturers? A. No, I do not remember them at this time.

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- Q. Did you comply with the requests that Mr. Goldston made in that respect? A. I would call my buyers into the office and read the letter to them and ask them as near as possible to comply. There were times when it was not within their jurisdiction because some of the store buyers would go in themselves and buy these goods without asking us.
- Q. So far as your buyers were concerned, I mean? A. We tried very hard to hold to the Guild so far as it was signed by us, the policy.
- Q. Did you also comply with their request with respect to buying from manufacturers that were designated or referred to as confirmed copyists and were attested to thereby by members of the Guild? A. I just answered that, I believe.
- Q. Would your answer be "yes," as you explained so far as you know your buyers—so far as your own buyers were concerned, I mean? A. So far as our own buyers are concerned; yes, sir.
- Q. To refresh your recollection, I will ask you whether or not you were ever asked by Mr. Goldston, or requested

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by Mr. Goldston, to not buy from Harris Dress Company because they were presumed to be copyists? A. I could not say definitely as to the Harris Dress Company.

Q. I will ask you the same question with reference to Feinberg & Weisen? A. Any one particular-in one particular instance, yes, I remember now.

Q. What is that? A. In one particular instance, yes. Q. Do you remember when that was? A. A short time

ago one of our retailers was requested to make return of a number of garments to Feinberg & Weisen on the ground that they were copies. The retailer did so. . The manufac. turer refused to accept the garments. The retailer notified the Guild asking the Guild what to do with the merchan-The manufacturer would not receive it and the retailer could not sell it, and what was to be done. It was finally agreed that the retailer could sell this merchandise on condition that he would refrain from buying any more of this merchandise—any more merchandise from this manufacturer. This one time that I remember that this manufacturer's name was brought in in connection with this subject—this is one time.

Q. This is Feinberg & Weisen—they were a manufacturer, you said? A. Oh, yes, they were. Of course, we have had other complaints about the same manufacturer, Weinberg & Weisen-Feinberg & Weisen, in times past by the Guild, but I mean as to where one of my retailers was buying and now will not buy from that manufacturer 11676 again, that is the only one that I can recall.

Q. Do your buyers now buy from Feinberg & Weisen? A. I could not say whether they buy now or whether they bought last week or the week before.

Q. What? A. I could not say whether they buy now or whether they bought last week or the week before that.

Q. I mean since before or within the past year, we will say. A. Oh, in the past year I would say they probably did; yes, sir.

Q. You do not know whether they do at the present time, subsequent to this incident to which you refer buy from them? A. No, I do not.

Q., Mr. Block, based upon your experience and knowledge of the industry, and of the retail dealers, and based on the retail dealers I mean in the women's and misses' ready-to-wear garments, and in your experience as a buyer for such retail dealers, and taking into consideration the facts that you have related in this proceeding as to the operations of the F.O.G.A., particularly as to curbing socalled style piracy, please state your opinion of the effect of that program upon retail dealers of women's and misses' ready-to-wear garments from the standpoint of their abil- 11678 ity to sell that merchandise in competition with other retailers in the industry-referring in my question to those realers that are co-operating with the Guild?

Mr. Albert: Are you finished with the question? Mr. Haycraft: Yes.

That is objected to, if the Court Mr. Albert: please, as no proper foundation has been laid for the conclusion of the witness and asking for an opinion upon matters which I do not think any man in the industry is capable of knowing an opinion foon, if he has any respect not only for his own knowledge but for the knowledge of anybody else in the industry, and certainly in the light of the testimony that has been taken throughout the country with the various figures that have been produced in evidence here, and that have been presented, I say that this is incompetent at the present time, and immaterial and irrelevant and improper.

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Examiner Averill: Read the question. (Question read.)

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Examiner Averill: Objection overruled, and the witness may answer the question if he can. If he cannot he can say so.

Mr. Albert: Exception.

Examiner Averill; Exception noted. Answer the question, please.

Mr. Haycraft: Do you understand the question?

The Witness: What is the question?

Q. (Question read.) A. Those retailers, in my opinion, who have to compete with non-signers—or non-signing retailers, are handicapped. On the other hand, those retailers who handle merchandise only in the higher brackets, of course, they are not concerned with the store that sell-lower-priced ready-to-wear exclusively. They are not in competition with the better type of specialty store or high type department stores. And I would say—

By Mr. Haycraft.

Q. Mr. Block, what have you to say as to why is the dealer that has to compete with non-signers, non-signing retailers, in the lower brackets handicapped? A. They are handicapped because they are prevented from selling good looking garments although they may be copies, but which non-signers with the Guild nevertheless sell in large quantities.

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Mr. Haycraft: That is all. (There was a short recess taken.)

Cross-examination by Mr. Albert.

Q. Mr. Block, you have testified with respect to a certain transaction involving the firm of Feinberg & Weisen. Can you tell us something further about that? A. Perhaps.

- Q. You stated that that transaction took place a short time ago. A. Yes.
 - Q. When was that? A. Two or three weeks ago.
 - Q. In November of 1936? A. Yes, sir.
- Q. Who was the retailer that was involved in that transaction? A. Foley Brothers Dry Goods Company, Houston, Texas.
- Q. Did you say that you say, or have a copy of the communications between Foley Brothers and the F.O.G.A., or did you ever see them? A. What I had was a letter from Foley Brothers on this subject.
 - Q. Have you'that letter? A. No, sir; not with me.
- Q. Could you produce it? A. I could if you want it. It is in the files, I suppose.
- Q. Did you discuss the matter in any way with anyone in the F.O.G.A.? A. With Mr. Goldston.
- Q. What was the subject or substance of the discussion, rather? A. What is that?
- Q. What was the substance of the discussion? A. Why, I related to him that Foley Brothers set forth that they returned the goods in accordance with the instructions of the shopper for the Guild and the manufacturer had refused to accept them and returned them to Foley Brothers. Foley Brothers did not know how to dispose of that merchandise. I said to him, "Now, what are you going to do about it? These people cannot take a loss; they cannot throw these goods away." After some discussion, he finally said, "Well, let them write us a letter that they will not do any more business, and that they will not buy any more goods from that manufacturer and we will make an exception and let them dispose of that goods at retail on their premises." I said, "All right, I will write them that way." And I did so.
- Q. What was the reply of Foley Brothers? A. I have not had any reply.

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- Q. Is that the way the matter stands at the present time? A. Yes, sir.
- Q. You do not know what action was taken by Foley Brothers on it? A. I do not.
- Q. You are familiar, are you not, with the warranty clause? A. Yes.
 - Q. In use by the co-operating retailers? A. Yes, sir,
- Q. I assume that Foley Brothers, as a co-operating retailer, had on its orders this warranty clause? I be lieve so.
- Q. Pursuant to that warranty clause, is it a fact that Foley Brothers had the right to insist that Feinberg & Weisen accept back the goods that had been adjudged copies? A. Retailers generally, I believe, felt that this rubber stamp, or the wording contained in that rubber stamp provided by the F.O.G.A. gave them the right to return goods to the manufacturer of those goods.
- Q. As a matter of fact, from your wide knowledge of this industry to which you have testified, do not manufacturers who accept orders with this rubber stamp on them, accept back dresses which have been adjudged copies, and which are returned by retailers?

Mr. Haycraft: I object.

Examiner Averill: Overruled, obviously.

A. To a great extent; yes, sir. Occasionally we have trouble with some of them that will not take them back.

By Mr. Albert.

- Q. As a matter of fact, is that very seldom, Mr. Block?
 A. I would say that applies to the minority of the cases, the small minority.
 - Q. A very small minority? A. A very small minority.
- Q. Do Foley Brothers, or had Foley Brothers acquiesced in Feinberg & Weisen's refusal to accept back the

dresses which have been adjudged copies? Foley Brothers, if they had taken those goods off sale, would have assumed the entire loss thereof, would they? A. Yes.

Q. Now, in addition to the warranty clause as contained on the order as given by your stores, there are other planted conditions on those order blanks, are there not? A. There usually are other clauses having to do with the shipment of goods, terms, and the basis under which they buy the goods, in general.

Q. Those clauses are placed on their orders by your member stores as a condition precedent to their doing business with the manufacturers; is that so?

Mr. Naveraft: That is objected to.

Examiner Averill: Overruled.

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A. Yes, they are usually printed on some part of the order.

By Mr. Albert.

Q. Those provisions that are printed on these orders for the most part are things which these retailers believe to be necessary for their protection in doing business with manufacturers; is that so?

> Mr. Haycraft: I object. Examiner Averill: Overruled.

By Mr. Albert.

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Q. In connection with this, now, then, is it a fact that what Mr. Goldston told you was that it was up to Foley Brothers to decide whether or not they wanted to continue to do business with the manufacturer who refused to accept the conditions which the retailer thought was necessary for his protection? A. That might be one way of looking at it.

- A. There are two ways of looking at it, Mr. Block?
- Q. What is the other way? A. That way is one way, and the other is that the Fashion Originators Guild of America if they were successful in eliminating these copyists, one by one, naturally it would be to the advantage of the Fashion Originators Guild of America.
- Q Do you know whether or not your other member stores were requested to cease doing business with Feirberg & Weisen? A. I do not know.
- Q. Have you any knowledge of it one way or the other?

 A. No.
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- Q. Certainly if such a request had been made to would have come to your knowledge; is that so? A. Well, it might have—it might have been presented to the buyers directly, but the probability is that they would have called my attention to it.
 - Q. Undoubtedly? A. Probably, I would say.
 - Q. Probably? A. Probably.
- 'Q. To your knowledge, in all the time that you have been—shall I loosely say, acquainted with the Fashion Originators Guild of America, have the officials of the F.O.G.A. ever met with the buyers of your member stores? A. Do you mean with the buyers who work in the retail stores?
- Q. That is right. A. Not connected with our offices, directly?

- Q. That is right. A. They might have, I do not know.
- Q. Would any relationship between your member stores and the F.O.G.A. be discussed with your knowing of it?

 A. Possibly.
- Q. Are you not the liaison officer between your member stores and the Fashion Originators Guild of America who are all mostly out of towners? A. Right.
- Q. When you had this conversation with Mr. Goldstondid you thereafter have any conversation with Mr. Post with respect to the matter? A. No, sir.

Q. Did you get any written communication or statement from Mr. Goldston with respect to the matter? A. No, sir.

Q. Is if not a fact that your member stores, when any particular manufacturer refuses to accept an order in the form that it is printed by your member, your member refuses to place an order with such a manufacturer? A. I do not know what the member store, itself, might do. My guess would be that it would refuse to place such an order, but I cannot swear to that because I do not know just what each of them might be.

Q. But in the ordinary course of events, except in the exceptional cases, if a manufacturer refused to accept an order as it was desired to be placed by the member store, that member store would refuse to place the order with that manufacturer; is that so?

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Mr. Haycraft: I object.

A. That is correct.

Examiner Averill: Overruled.

By Mr. Albert.

Q. Your office, as distinguished from your member stores, places orders for the member stores; does it not.

A. Yes, sir.

Q. When, in your capacity as a local representative of these stores, the manufacturer refuses to accept the order in the printed and stamped form used by your members, do you refuse to place such an order with him?

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Examiner Averill: That order has already been acted upon, I think you need to reframe the question.

Q. As a matter of fact, Mr. Block, is not the greatest protection that is afforded to a retailer in his attempt to

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John Block-For Commission-Cross.

return adjudged copies to a manufacturer, the warranty stamp placed upon the order?

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant.

Examiner Averill: Overruled.

A. I would say yes.

By Mr. Albert.

Q. As a matter of fact, is not that the only manner in which the retailer can insist in the ordinary course of business that the manufacturer accept back adjudged copies?

Mr. Haycraft: I object to that.

A. I think so.

By Mr. Albert.

Q. Mr. Block, is it not a fact that what was indicated to you was that it was up to Foley Brothers to decide whether or not they wished to do business with the manufacturer who would refuse to abide by the conditions which were incorporated in the Foley Brothers' orders. A. Yes.

Q. Does Foley Brothers, to your knowledge, Mr. Block, take over the whole output of Feinberg & Weisen? A What do you mean by whole output?

Q. Does Foley Brothers take the entire production of. Feinberg & Weisen? A. No, sir.

Q. As a matter of fact, they probably take a very small part of the production of Feinberg & Weisen? A. That is right.

Q. In order to eliminate Feinberg & Weisen in the light of the remark made by Mr. Haycraft, it would be necessary

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for a great many retailers to refuse to do business at all with Feinberg & Weisen: is that so? A. Yes.

Q. Mr. Block, Foley Brothers is a co-operating retailer; is it not? A. Co-operating with the Guild, yes.

Q. As such co-operating retailer, and in an endeavor to co-operate with the policies of the Guild, it affixes to those orders a warranty clause stamp, does it not? A. No doubt.

Mr. Martin: L. object as already having been answered.

Examiner Averill: It has already been answered, but he is undoubtedly leading up to something else, and the question just cannot start right 11702 off from nowhere.

By Mr. Albert.

Q. If Foley Brothers did not place this warranty stamp upon its orders, and if a manufacturer sold dresses to Foley Brothers which were adjudged copies, in what manner except by taking the loss on those dresses could Foley Brothers get redress for the sale to it of dresses which were adjudged copies?

> Mr. Haycraft: Objected to as calling for a legal conclusion.

Examiner Averill: Overruled.

A. They could not get any redress unless they could show that there had always been that understanding that the manufacturer was not to ship them copies; unless they could prove that I doubt if they could get any redress unless the manufacturer voluntarily took the dresses back, which is unlikely.

Mr. Haycraft: I move to strike the answer as being incompetent. This witness is no lawyer.

Examiner Avertll * He is giving the answer from his viewpoint. Motion denied.

By Mr. Albert.

Q. Was there any such custom, Mr. Block, in the industry prior to the fermation of the Fashion Originators Guild of America. A. No.

Q. No? A. No

Q. Is there any such custom in the industry to-day be tween retailers and inanufacturers that retailers—where retailers do not use the warranty clause, I mean? A: No. without them using the warranty clause.

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clause there is no such custom, is there? A. No.

Examiner Averill: He means retailers who are not affiliated with the Guild in any way, but who order, in the ordinary and in the general course of business, from manufacturers certain types of dresses and things, is there any custom there in connection with the return of popies?

A. Let me get this.

By Mr. Albert.

Q. Yes. A. The retailer who is not amiliated with and is not a signatory to the Fashion Originators Guild of America plan, I would say he is not concerned very much as to whether they are copies or not.

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By Examines Averill.

Q. There is no custom that you know of that exists for retailers who are not affiliated with the Guild to put any such clause as that in their orders? A. No, sir. That is right.

Examiner Averill: I think that is sufficiently clear.

By Mr. Albert.

Q. I think I want to go just one step further, Mr. Block. A. Yes.

Q. In the absence of any such clause is there any custom in the industry by which the manufacturer will accept back dresses which have been adjudged copies? A. I think not.

Q So that if Foley Brothers desired to co-operate with the Guild in its policy of anti-style piracy, it can only make possible the return of goods, the return of goods of adjudged copies, by the use of this warranty, is that so? A. I think so. :

Q. So that unless Foley Brothers insist that Feinberg & Weisen recognize that warranty clause, it could not be cooperating with the Guild, could it? A. I. would say that is a sign of co-operation, yes, sir.

Q. I do not believe that is an answer to the question. Will you please answer the question?

Examiner Averill: Let the question and the answer be read. . . .

(The question and answer were read.)

Examiner Averill: Mr. Block, by your answer you mean that the act of insistence upon, by Foley Brothers, of the manufacturer taking back the ad- 11709 juned copies, that that would be upon Foley Brothers part, upon their part an act of co-operation as instanced by the taking back of the goods?

A, It would be their act of co-operation, either an act of co-operation or an act of self-preservation, it could be taken either way. Here is a man trying to get his money

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back for goods he cannot sell. He is taking care of his own interests. The Guild may think he is taking care of the Guild interests.

By Mr. Albert.

- Q. They are both taking care of their respective interests? A. They are, both.
 - Q. Foley Brothers is a member of the Guild? A. Yes.
- Q. And they would be protecting their respective interests, the interests of Foley Brothers and the interests of the Guild? A. Yes, I have no doubt.

Q. You have no doubt? A. No doubt at all.

11711 Q. Referring to this particular action in connection with Feinberg & Weisen, their refusal to recognize the warranty, it was an act of self-preservation on the part of Foley Brothers to refuse to do business with Feinberg & Weisen unless they agreed to recognize the warranty stamp, is that not so? A. I think so.

By Examiner Averill.

Q. Mr. Block, you are acquainted with these situations from your long and wide experience in the industry and therefore I want to ask you this: In view of that experience and based upon that experience, in the event that Foley Brothers had returned the goods to the manufacturer, the adjudged copies to the manufacturer, and the manufacturer refused to take them back and the goods had been thrown back on Foley Brothers, and they had paid

- manufacturer refused to take them back and the goods had been thrown back on Foley Brothers, and they had paid for them—I am not talking about suing—what action would have been usual and customarily taken on the part of the Guild to assist Foley Brothers? A. That is up to the Guild to answer. I do not know.
- Q. I thought maybe you had had instances of that and knew. A. No, when I first talked to Mr. Goldston about

it, he said, "It is their problem." I said, "Well, you have got to do something to help them out." So that is what he told me.

Q. I thought perhaps you knew of other instances as to what was done. A. I do not believe so.

By Mr. Albert. .

Q. What happened in any instances that you are familiar with? A. You are asking me about other instances?

Q. Yes. A. Well, it sometimes happens that there are disputes as to whether a manufacturer should take goods back or not and as a rule we iron them out. We go to the manufacturer and say, "Now, go on, you are only wasting time and you know very well you are not going to court about this, so pick them up." So he picks them up, as a rule, but sometimes there is a case like this when we run up against a stubborn case and there is nothing to be done.

Q. You do not understand, or do not understand by Mr. Post's statement—

Examiner Averill (interposing): Just one moment please. Lawant to finish this inquiry.

Mr. Albert: Surely.

Examiner Averill: In such a case as you spoke of, in such a case where they have been clearly adjudged that the dresses in question were copies, then is it so or is it not the custom of the Guild to advise all of their members and affiliates of the fact that such and such a manufacturer has refused to abide by the warranty clause and take back goods, or that such and such facts are the case so that such members may take such action as they may see fit in connection with dealing with that manufacturer in the future—is not a bulletin sent out, or something?

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The Witness: You say members, you mean retail members?

Examiner Averill: Yes, know of any such.

The Witness: I do not know of any such letters.

Mr. Albert: It is not the fact there, Judge. I can explain it fully, if you want.

Examiner Averill: I just wanted to find out about that particular point.

By Mr. Albert.

- Q. As a matter of fact, Mr. Block, is it not true that nothing concerning the Foley Brothers matter was ever made the subject of any request to you or instructions to you or advices to you with respect to all of the other stores represented by you? A. That is right. It was an individual case.
 - Q. A specific, individual case? A. That is right.
- Q. When you stated a moment ago that Mr. Post told you that this was your problem— A. Mr. Goldston, not Mr. Post.
- Q. When Mr. Goldston told you that that was your problem— A. Yes.
- Q. —of course, you used the word "theirs"? A.I meant Foley Brothers' problem.
- Q. When Mr. Goldston told you that it was Foly Brothers' problem, did you not understand from your knowledge of the Guild policy in anti-style piracy that that meant it was up to Foley Brothers to decide whether or not they wished to co-operate with the Guild and do an act of self-preservation by refusing to to business with the manufacturer, Feinberg & Weisen, who had refused to accept their conditions placed upon their order? A. No. I simply understood him to mean that that is something that Foley Brothers had to worry about.
- Q. There were no instructions of any kind by the Guild, were there, if such was something to worry about by Foley.

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Brothers only? A Well, that came later, after he said that—why, we kept on talking about this matter and he finally said, "Well, I will tell you what we will do. We will allow them to sell the dresses, provided he writes us that he will not do any more business with this same manufacturer." I said, "I will write him so" and I did and after that I do not know what happened.

Q. Wrote who? A. Wrote our client, Foley Brothers.

Examiner Averill: Foley Brothers?
The Witness: Foley Brothers.

By Mr. Albert.

Q. What did you write Foley Brothers? A. I wrote them what Mr. Goldston had told me.

Q. Would you mind giving us the substance of the letter that you wrote, as nearly in the exact language as possible? A. I wrote them that they will be permitted to sell the dresses, provided they wrote to the Fashion Originators Guild of America advising them that they will not purchase any more garments from that manufacturer.

Q. Did you write to Foley Brothers the additional phrase, "Unless Feinberg & Weisen were willing to accept and recognize the warranty clause"? A. No, I did not.

Q. Then, as a matter of fact, do you not know that by reason of the relationship between Foley Brothers and the Guild, and your offices to the Guild, that that was a commonly accepted non-co-operation? A. I do not get what you are driving at.

Q' I will put it this way: As a matter of actual fact, Mr. Block, did you not know that by reason of the relationship which existed between the firm of Foley Brothers and the Fashion Originators Guild of America, and your offices of Kirby, Block & Fischer and the Fashion Originators Guild of America, that that was the commonly accepted and known interpretation of what was meant by what you claimed to be the words of Mr. Goldston?

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Mr. Hayeraft: I object to anything of that kind as vague and indefinite and unintelligible.

Examiner Averill: We have had this thing in so many times. I do not know whether the witness understands it or not.

The Witness: I understand it. My answer would be "Yes."

Mr. Haycraft: I must insist upon my objection because this is repetitious and the witness has an swered this several times already.

Examiner Averill: It is already answered. Let's go to something else.

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By Mr. Albert.

Q. Mr. Block, is it a fact that Foley Brothers advised that it has ceased doing business with Feinberg & Weisen by reason of Feinberg & Weisen's refusal to adhere to the provisions of the warranty clause; that they had merchandise on hand which they had purchased from Feinberg & Weisen and that unless it was permitted Foley Brothers to sell that merchandise it would suffer the complete loss on that item and Foley Brothers stated that since they were not going to do business with Feinberg & Weisen and in order not to lose money on that transaction they believed that the fair and equitable thing to do would be to permit them in that one case to sell these goods?

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Mr. Haycraft: ·I object to any further questions on this particular matter.

Examiner Averill: I will allow this particular question and answer and I think that should be sufficient.

Mr. Haycraft: That is contrary to the facts in a

Mr. Feldman: Mr. Haycraft has not seen the correspondence, I believe. How could be possibly know what the facts are in the case?

Mr. Albert: How does Mr. Haycraft know that it is contrary to the facts? Has he had some access to these papers of which we have no knowledge? If so, he must know it is in accord with the facts.

Examiner Averill: Overruled. Answer the question.

A. No, that is not the way the letter read.

By Mr. Albert.

Q. Aside from what is contained in any letter that was written, Mr. Block, is it not a fact, as I have stated it? A. No.

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- Q. That is all I want to know. A. All right. You have it.
- Q. Mr. Block, I believe you testified that the first contact that you had with the fair trade practice policies of the Guild was in June, 1935, is that correct? A. No. I do not know if that was the first contact. I testified that there was such a meeting.
- Q. That is you referred in your testimony to the fact that there was a specific meeting upon that point? A. Yes, sir.
- Q. You do not mean to indicate that that was the first time that you heard about fair trade practice provisions, do you? A. Well, that meeting was called especially for the discussion of those provisions, and also, I presume, that that was the first time that the matter as a whole had been brought to our attention.

Q. To the best of your recollection, is that the first time that it had come to your attention that the Guild was desirous of extending, let us say, its policy to include certain fair trade practice provisions? A. I believe so.

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AFTERNOON SESSION-2 P. M.

SIDNEY ROSENZWEIG was thereupon called as a witness for the Commission and, being first duly sworn, testified as follows:

Direct examination by Mr. Martin.

- Q. Will you state your name? A. Sidney Rosenzweig.
- Q. How do you spell it? A. S-i-d-n-e-y R-o-s-e-n-z-w-eig
- Q. Will you state your residence? A. 3150.
- Q. What? A. Rochambeau Avenue.
- Q. Where? M. Bronx.
- Q. What is your occupation, Mr. Rosenzweig? A. As sistant dress buyer.
 - Q. With whom, Mr. Rosenzweig? A. A.M.C.
 - Q. A.M.C.? A A.M.C.
- Q. How long have you been with the A.M.C.?. A. Well, I should say I have been with them a little over a year although I had been connected with them before, but a little over a year this last time.
- Q. Mr. Rosenzweig, were you connected with the A.M.C. in March of 1936? A. I was.
- Q. In what capacity, Mr. Rosenzweig? A. I was on the A.M.C. payroll assigned to service for John Shillito Company, and F. & R. Lazarus Company service in a minor capacity, I might say.
- 11730 Q. Mr. Rosenzweig, do you happen to know Mr. Irving Plaut of the John Shillito Company? A. I do.
 - Q. Do you have any recollection of seeing Mr. Plant in March of 1936? A. I have.
 - Q. Mr. Rosenzweig, can you relate, please, just what were the circumstances under which you saw Mr. Plaut at that time? A. Well, on the morning of March, 1936—
 - Q. Mr. Rosenzweig, on the morning of March of what date? A. March 4th, I am sorry, 1936, I was told by Miss

Simon, Mr. Bergdahl's secretary, that Mr. Plaut would be in the office that morning and that I was to accompany him in the market. Mr. Plaut reported at the office and we left together with Mr. Fishel.

Q. How do you spell Fishel? A. F-i-s-h-e-l.

Q. Who is Mr. Fishel, Mr. Rosenzweig? A. He is a dress buyer for John Shillito Company. We went around the market and visited dress concerns with the object in mind of finding out more or less what was going to be done with our orders that had been placed on order prior to that time.

Q. Mr. Rosenzweig, by that do you mean the orders to the John Shillito Company? A. That is right.

Q. Do you know a firm of manufacturers, Mr. Rosenzweig, in New York City, by the name of C. H. D. Robbins? A. I do.

Q. Have you visited that firm, Mr. Rosenzwe g? A. I have."

Q. Did you on that day visit that firm? A. I did.

Q. Whom did you see there? A. Well, I recall that I have a memorandum—I have a memorandum here of what transpired if I am permitted to use it.

Q. Certainly, Mr. Rosenzweig.

Mr. Albert: If your Honor please, I object to the witness using the memorandum or reading from any memorandum unless he first testifies that he cannot remember the transactions without its aid, and, furthermore, that testimony in regard to the circumstances under which he made the memorandum.

Examiner Averill: Yes, it is essential first that he give us some idea as to whether or not he can testify without the use of the memorandum, and the circumstances under which the memorandum was made and who made it.

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By Mr. Martin.

- Q. Did you make any memorandum, Mr. Rosenzweig, of the visit to C. H. D. Robbins? A. I did.
- Q. When was the memorandum made, Mr. Rosenzweig!

 A. You mean where was it made?
- Q. Well, I will state that, where was it made? A. It was made in the showroom.
- Q. When was it reduced to writing? A. That same day.
- Q. Is that the memorandum to which you wish to refer to refresh your recollection? A. That is the memorandum.
- 11735
- Q. All right, sir, will you refer to that memorandum-

Mr. Feldman: I did not think that it has been shown that his recollection needs to be refreshed, and I do not think it has been shown that this is, in fact, the memorandum that he made.

Examiner Averill: Let us have a full question and then we will proceed from that.

Mr. Martin: All right, sir.

By Mr. Martin.

- Q. Will you tell me this: Whom you saw at C. H. D. Robbins and what transpired there on the occasion of March 4 when you visited them with Mr. Irving Plant, tell us from your own recollection if you can, and if you cannot from your own recollection refer to any notes that you may have. A. Well, I recall the names of the gentlemen that were present, but I do not recall the exact conversation verbatim, although I do have it here in the notes.
- Q. Which notes were made at that time? A. Which notes were made at that time.
- Q. By you, Mr. Rosenzweig? A. And they were made by me and transcribed that night, by me that night.

Q. Is that the notes? A. This is a copy of the notes that were made; in other words, there was—

Q. Did you dictate them? A. I dictated them per-

sonally.

Q. This is a copy of what was written by the stenographer? A. This is a copy of the record as it was taken

by the stenographer and given to me.

Q. As dictated, and have they been checked by you as correct? A. Yes. From my own recollection; I remember that Mr. Plaut and Mr. Fishel and myself were there, and Mr. Joe—Mr. Joe Lakwitz—I spelled his name that way the first time in my notes, but that is wrong, but on subsequent information I know his name to be Mr. Lackritz, together with a Mr. Hayman.

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By Mr. Martin.

Q. How do you spell that? A. H-a-y-m-a-n.

Q. Proceed. A. Both of whom are connected with the firm of John Shillito & Company at the present time.

By Examiner Averill.

Q. C. H. D. Robbins, that was one of the dress manufacturers? A. Yes, sir.

Q. And Mr. Plaut, I think, is the gentleman who previously testified on the witness stand to that effect? A. I do not know about that.

Mr. Martin: That is correct.

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By Examiner Averill.

Q. Tell us what you know about the interview with C. H. D. Robbins. You went there? A. I went there with the other two gentlemen, and Mr. Plaut asked Mr. Lackritz about the orders that had been placed, and asked him whether or not they were to be shipped. I cannot recall the exact details of the conversation.

Q. What did Mr. Lackritz say? A. Well, he said that they had not been shipped.

By Mr. Martin.

Q. Did he say that they would be shipped? A. No he said they would not be shipped.

Q. Did you make any effort to see any goods in C. H. D. Robbins' place of business? A. Well, as I recall it, a model came over to where we were sitting, and she was told not to show us any merchandise.

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Mr. Albert: Do you recall who said that?
The Witness: Mr. Lackritz, if I remember convectly, but I am not certain of that.

By Mr. Martin.

Q. Was there any request made of C. H. D. Robbins to ship goods on order at that time? A. Well, to the best of my recollection, Mr. Plaut asked him if he was going to ship the merchandise, and he said he was not going to unless Shillito Company complied with the Guild's request to sign a declaration of co-operation, or something of that sort.

Q. Was there any discussion relative to White's store, have you any recollection? A. I do recall mention was made about R. H. White Company to the effect that R. H. White Company was red carded, and I believe that Mr. Plaut mentioned something to the effect that Shillito Company had nothing to do with R. H. White, that Shillito Company had not been red carded. I do not recall the balance of that conversation very clearly.

Q. Do you recall whether or not anything was said about any other stores in Cincinnati? A. If I remember correctly, there was mention made, or, rather, I should say that Mr. Plaut asked if any of the merchandise that we had bought, or, rather, some types had been shipped

to the same type of merchandise had been shipped to any other Cincinnati stores, and I believe the answer by Mr. Lackritz was that merchandise had been bought and shipped to other stores in Cincinnati.

Q. Was anything said about signing a new, declaration?

Examiner Averill: He told you

A. I believe there was, although I can't camember-

Examiner Averill: He has told us that.

A. -all of those details.

By Mr. Martin.

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Q. Was there any discussion as to the effect of the Guild program on Shillito's as compared with chain stores? A. Well, I believe that Mr. Plaut mentioned something in that connection to the effect that were we not to have the cheaper copies, we would be more or less chasing our customers into the chain outfits, who are not subject to the Guild restrictions, and who did feature copies of higher-priced merchandise.

Q. Do you recall what Lakritz' reply was as to that?

A. I believe he said something to the effect that Skillito's and the other stores of similar nature were to co-operate with the Guild, they could by their joint action step the chain outfits from competing with us in that respect. I do not know that those are the exact words, and I do not know if that is the exact details, but I recall something about it.

Q. Do you have any recollection as to whether anything was said about the fact that the goods in question which you were seeking to get had or had not been ordered prior to red carding? A. Yes, I know definitely that that merchandise had been ordered prior to the red carding—

Examiner Averill: No, wait, wait.

Mr. Martin: Wait a momenta

Examiner Averill: He did not ask you what you thought; he asked you was there anything said about it.

By Mr. Martin.

Q. Was there anything said about it? A. Yes, there was something mentioned.

Q. Do you recall what was mentioned? A. I believe, as I remembered it, Mr. Plaut brought out the fact to Mr. Lackritz that the orders had been placed prior to the red carding of Shillito by the Guild, and he said that inasmuch as the order had been so placed, that the subsequent

Q. Did Lackritz say anything about thy he was not shipping the goods? A. Well, he mentioned something to the effect that the Guild—inasmuch as the Guild had started to red card the A.M.C. stores, he would not ship any merchandise, inasmuch as he had been so notified, but——

Q. Well, what did you do then? A. I don't remember, I don't remember whether that was the full extent of the conversation or not.

Q. When you left Robbins', did you make any notes'.

A. No, I made these notes in Robbins' showroom as the conversation took place.

Q. Do you know whether or not Lackritz is a member of the firm of Robbins, C. H. D. Robbins? A. To the best of my knowledge, he is.

Q. Now, after you left C. H. D. Robbins, did you go to any other manufacturer? A. We did.

Q. Do you know a firm in New York by the name of Witlin & Schneider? A. I do.

Q. Did you go to see them? A. We did.

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Q. Do you recall who you saw there? A. If I remember correctly, when we went up there we saw a Mr. Mark—Mark, I believe the name was, in the showroom there.

O. Did you see anybody else? A. I don't recall.

Q. And who was with you? A. Mr. Fishel and Mr.

Plaut.

Q. Well, can you tell me in substance what happened there? A. Why, as I remember it, when we went—called on the showroom there, they were busy waiting on other buyers, and we sat down in one of the booths. Several of the models that were displaying dresses approached our booth, and I believe—no—they were not told not to show to us, but they continued to display these dresses in the course of their showing, and we took several notations, and I think subsequently Mr. Marx approached Mr. Plaut, and he said something to him aside, and Mr. Plaut told us that we were going to leave, and we walked out, and he mentioned something to the effect that Mr. Witlin was busy, and that he would return that afternoon and speak to Mr. Witlin himself. That was about all I remember of that.

Q. Was any effort made at that meeting to obtain shipment of goods? A. I don't recall.

Q. Can you refer to your notes and refresh your recollection in any way? A. If I would be permitted to refer to the notes I could refresh my recollection.

Mr. Martin: If your Honor please, I think— Examiner Averill: Let me see the note about the Witlin & Schneider matter.

(The witness hands paper to the Trial Examiner.)

Mr. Martin: I think it is wholly competent.

Mr. Feldman: Is that the same note?

Mr. Martin: It is an original copy.

Examiner Averill: Now, as I understand from what you have stated, you went there in the morning and had this conversation, or part of the conversation?

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The Witness: I believe it was in the morning. Examiner Averill: Then did you go back again in the afternoon?

The Witness: I did not go back in the afternoon.

Examiner Averill: You did not?

The Witness: No.

By Mr. Martin.

- Q. Do you recall whether anybody went back in the afternoon? A. Yes, I recall Mr. Plaut went—that is, he told me he went back.
- Q. Did he report to you what transpired when he went 11753 'back that afternoon? Answer "yes" or "no."

Examiner Averill: Can you answer that that way?

The Witness: Y

By Mr. Martin.

Q. Did you make any memorandum of what he told you? A. Yes, yes, I did.

Q. Did you dictate a statement of what he told you to your stenographer, and did she write it up? A. No, Mr. Plaut told me the sum and substance.

Examiner Averill: Do not tell us what Mr. Plaut told you.

By Mr. Martin.

- Q. Do not tell us what he told you. A. No, I am not going to tell you what he told me, but I do say he told me the sum and substance of what his visit was, and I jotted it down in longhand, and subsequently dictated the entire report.
 - Q. And the stenographer wrote it up? A. That is right.

Q. Did you then submit that report to Mr. Plant for his inspection to see whether that was as he related it to you? A. Well, Mr. Plant and I went over the entire report and we compared not only his recollection, and also mine, to the notes, and at the same time we compared my verbatim notes to the dictated copy to make sure that everything was in order.

Q. And is this dictated copy which you have the result of that collaboration? A. That is right.

Q. And you are satisfied that it is a correct account of what took place on the occasion of these interviews? A. I am.

Q. Do you recall visiting a firm by the name of Louise Mulligan? A. Yes.

Q. Who did you see there? A. I don't remember the name of the gentleman.

Mr. Albert: I do not have any objection if you suggest the names of them.

By Mr. Martin.

Q. Did you see a Mr. John Irwin there? Do you recall that name? A. I recall a Mr. John Irwin, but I do not recall whether he was connected with that firm or with other firms, inasmuch as I had been to several of the resources, but if my notes state the name Irwin was the gentleman at Louise Mulligan, that is the gentleman that we saw.

Q. Do you recall Louise Mulligan is a New York firm? A. No, I think Louise Mulligan is a Chicago firm, a show-room at the New Yorker Hotel. That is, they use one of the rooms there several times a week, as I remember it.

Q. Was any effort made to obtain goods on order with Louise Mulligan at that time? A. Yes, something—Mr. Plant asked Mr. Irwin whether or not we were going to get the goods on order.

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Q. Well, do you recall what Mr. Irwin said? A. No. I do not recall what Mr. Irwin said.

Examiner Averill: You do not recall?

The Witness: I do not recall that, your Honor. You see, those New York—that is, the firms located in the New Yorker Hotel were a lot of firms I had never been to before, and they are not as clear in my mind as some of the other resources with whom I had come in daily contact, so I cannot even picture the man that we had spoken of.

By Mr. Martin.

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Q. Do you recall whether or not you saw any goods there? A. I do not remember.

Q. Do you recall whether Mr. Irwin made any statement about shipping goods or not, which were on back order? A. There were two or three firms in the New Yorker Hotel that we visited, and I cannot at the present time, without refreshing my memory a little bit, recall the details of the conversations. I do know that we spoke to most of the men. That is, we spoke to the representatives of these various firms down there, and I knew that one of them mentioned something about having shipped certain orders up until a certain time, but I cannot distinguish which said which, and what they said.

Q. Do you recall whether or not Mr. Irwin made any statement about instructions he might have received?

Examiner Averill: How?
Mr. Martin: Read the question.
(Question read.)

A. Yes, I do recall that.

By Mr. Martin.

Q. Do you recall what? A. I do recall this: In order to clarify what I said before, as I said, we visited several firms there. We spoke to their representatives, and I do know that almost every one of them mentioned something about instructions having been received from Chicago, but I cannot remember the conversation as they gave it to us, because I cannot distinctly pick out each individual man; in other words, I can give you the sum and substance of each one, of each conversation, but I may be getting the firms twisted up a little bit.

Mr. Feldman: Just a little bit?

11762

By Mr. Albert.

Q. Mr. Rosenzweig, as regards the remainder of the manufacturers whom you visited on March 4, 1936, is it your testimony that you have no concrete specific memory of any particular transaction with any particular manufacturer on that date? A. No, I won't say that. I have a memory as to what took place subsequently, but my memory is not clear with regard to certain things.

Q. So that you cannot isolate your memory and say that a certain thing occurred at a certain manufacturer's?

A. No, you see—

Examiner Averill: Gentlemen, we understand that. Just say no—

The Witness: But I want to say-

Examiner Averill: I understand all that, but I am not going to fill up the record with all of this explanation. Just say "yes" or "no."

The Witness: . May I hear the question again?

By Mr. Martin.

Q. Do you recall going to see Joanne Junior? A. I do.

Q. To the best of your recollection, tell me what trans-

- Q. Do you recall who you saw there? A. Mr. Martin Zinn.
- pired there. A. As I recall it, Mr. Plaut asked Mr. Zim about the merchandise that he had on order, and Mr. Zim replied that he could not ship what had been already purchased, inasmuch as the Guild had refused to permit him to do so. In other words, the red carding of the A.M.C. stores automatically prevented him, and, if I remember correctly, Mr. Plaut asked him why he could not ship the merchandise despite the Guild restrictions, and Mr. Zim replied to the effect that it was not only the \$5,000 fine to which he would be subjected by the Guild if he were to ship this merchandise that bothered him so much, as the fact that the Guild could prevent him from securing silks from the Silk Guild, which would; in sum and substance, put him out of business.

Examiner Averill: I see.

A. (Resumed) While we were there, there was some merchandise displayed around, and Mr. Plaut looked at one of the garments there and mentioned the fact that he would like to purchase about fifty-odd pieces of them, and Mr. Zinn replied that he had no doubt but that he could book an order for at least 300 pieces from the A.M.C. if he were permitted to show them up there. He also mentioned the fact that he was at his wit's end as to the outcome of this, because of the fact that he had always co-operated with the A.M.C. since the inception of his business, and that he did not know how he was going to meet expenses, and, as I recall it, he mentioned something about going down to see some person down at the Guild, Mr. Gol—or—

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Mr. Albert: Golby?

The Witness: —Golby, that is it. He went down to see Mr. Golby, and Mr. Golby had repeatedly stalled him off and never given him any concrete answer as to how to thrash this affair out, and that he wished to have that disposed of, or could be disposed of, inasmuch as he did not know how he could replace the A.M.C. business. That, more or less, was the sum of my recollection.

By Mr. Martin.

Q. Do you know a firm in New York by the name of Junior Guild? A. Junior Guild is not a New York firm, it is a Chicago firm, if I am correct, and their office was one of those in the New Yorker Hotel whom I got—whom I am all hazy about, in connection with the other—Louise Mulligan, also mentioned there.

Well, Mr. Plaut spoke to Mr. Harry Cohn, and asked him about the merchandise that we had on order, and Mr. Cohn mentioned something to the effect that they had shipped all back orders, and also a certain number of subsequent re-orders of merchandise which we had purchased prior to this red carding business, but he said he could no longer do so because of the fact that he received a telegram from Chicago, from a Mr. Gilbert, whom I understand is the head of the Junior Guild organization, to the effect that they could not accept any more business from any so-called red carded stores.

I saw that telegram, and I copied it down verbatim. Mr. Cohn did mention that at the beginning of the controversy between the A.M.C. and the Guild, the Chicago manufacturers had a conference with their attorneys to decide what was to be done in so far as re-orders were concerned.

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Examiner Averill: Now, then-

The Witness (resumed): In so far as back or ders was concerned, I mean, and that they had decided to continue to ship all back orders despite the red carding.

Examiner Averill: I see.

The Witness: But they were not to accept any future orders, and Mr. Cohn mentioned that ther had continued to ship the back orders, but that they had been notified that they were not to do so, and that, therefore, they were not going to ship them anything further, and he also stated the fact that this general controversy had severely affected the amount of business which they were getting out of their New York showroom, but that he felt it would be settled very shortly thereafter, and, therefor, inasmuch as the Junior Guild operates on the basis of confining the merchandise to one resource in a town, they were not soliciting any further business in the A.M.C. towns with this expectation in mind, and I believe that was about all that was said there.

By Mr. Martin.

Q. Now, do you have any recollection of going to see Frank Starr-Friedlander.? A. Yes, I know we went to Frank Starr-Friedlander.

Q. Yes.

Examiner Averill: Is that S-t-a-r-r?.
The Witness: That is right.

By Mr. Martin.

Q. After refreshing your recollection, tell me who was present there and what transpired. A. Mr. Starr and Mr. Friedlander were present, and they entered into a dis-

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cussion with Mr. Plaut. Mr. Plaut asked them the usual question; that is, the question we had put—he had put to every manufacturer, about the merchandise we had on back order, and either Mr. Starr or Mr. Friedlander answered to the effect that they were not shipping any merchandise to us, and they stated the reason they were not doing so was because they were subject to a fine or some sort of punishment by the Guild if they were not to abide by its decision red carding A.M.C. stores, and Mr. Plaut mentioned something to the effect that the orders had been placed prior to the inception of this controversy, and either Mr. Starr or Mr. Friedlander stated that that might be the fact, but they could not do a thing.

He also mentioned the fact that in his opinion the one mistake that the Guild made was in not permitting manufacturers to ship all the merchandise that had been bought prior to the inception of this controversy, and then prevented, or advised their manufacturers, not to show or ship any more merchandise, but he did say that as matters stood at the present time—that is, at the time we were there—they were not going to ship any merchandise to us until they were permitted to do so by word from the Guild.

Q. Well, now, after refreshing your recollection, tell me what transpired at Lewis-Cohn's—who you saw there, and what happened. A. We saw a Miss Corelli, at Lewis-Cohn's, and Mr. Plaut asked her about the merchandise on order from her. She said she was sorry, but she couldn't do a thing about it, and she said the red card prevented her firm from shipping any merchandise to Shillito. She also mentioned something to the effect that it was too bad that they could not ship us any merchandise, because their line was stronger then than a good many seasons prior to that, and, anyhow, she would not show us—she stated she could not show us anything because of the restrictions. And Mr. Plaut stated, or called

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to her attention the fact the orders had been placed prior to the to this controversy arising, and he also mentioned that after all a contract is a contract, and it was accepted in good faith. She says, "Yes," but she blamed it more on the A.M.C. for not receiving-for Shillito not receiving the back orders, and she mentioned something to the effect that it had been called to her attention that the A.M.C. had threatened to make a football of the merchandise that was shipped by some of these Guild houses. I don't remember much else that took place there.

Q. All right. Will you refer to your notes and tell me who you saw at Raich & Goldfarb, and what transpired

there? 11777

> Examiner Averill: What is the name of these people?

> The Witness: Raich-Goldfarb, Raich Gold f-a-r-b.

Examiner Averill: Thank you.

A. Mr. Raich and Mr. Goldfarb, and a Mr. Grettinger, were present, together with Mr. Plant and myself.

Mr. Plaut asked them what about the goods on order, and they said they were sorry, but inasmuch as they had received instructions from the Guild not to ship us any merchandise, they could not very well do so.

They also mentioned the fact that it was not only the \$5,000 fine that they were afraid of, but it was also the fact that they stood a good chance of not being able to secure any piece goods if the Guild saw to it that the Silk Guild would not give them any merchandise.

They also mentioned the fact that they had resigned from the Guild prior to the start of this controversy, and that the speaker very sincerely regretted the fact that he permitted them to talk them back into the organization again.

- Mr. Albert: What manufacturer was this, Mr. Rosenzweig?

The Witness: Raich & Goldfarb.

By Mr. Martin.

Q. Raich & Goldfarb? A. And that he would be very happy to find some way to get out of the thing. He said he only wished that he had stayed out when he was out.

Q. Did they show you any garments there? A. No, they did not show us any merchandise.

Q. Did you go to see any of the other manufacturers, Mr. Rosenzweig? A. Well, may I be—

Examiner Averill: Do you remember the names of any more? Oh, you do not recall them? The Witness: I do not recall.

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By Mr. Martin.

Q. Now, after making these interviews in company with Mr. Plaut, what did you do then, Mr. Rosenzweig? A. Well, I went back to my office and waited until Mr. Plaut returned, and after he gave me the results of his afternoon—

Examiner Averill (interposing): You have told us that.

A. -of his conference with Witlin & Schneider-

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Examiner Averill: Wait—do not tell us again about how you prepared the notes; you have told us all that.

By Mr. Martin.

Q. After these-

Examiner Averill: If you had conversation with him about something else that may be pertinent,

Sidney Rosenzweig-For Commission-Direct-Cross,

I do not know, but let us not go into that other again.

By Mr. Martin.

Q. After these notes were dictated by you to the stenographer, and written up by the stenographer, did you give a copy of them to Mr. Plaut? A. I did.

Q. Did you give a copy of them to-

Mr. Albert (interposing): Mr. Bergdahl.

By Mr. Martin.

1783 Q. —Mr. Bergdahl? A. I did not.

Q. Did you ever discuss this with M. Bergdahl in any way? A. I never discussed this with Mr. Bergdahl.

Q. Do you know whether or not any of these goods that were on order with these manufacturers, and concerning which you have been talking, were ever, in fact, shipped!

Examiner Averill: You mean to Shillito? Mr. Martin: To John Shillito Company.

A. To the best of my knowledge, they were not shipped

(The paper heretofore marked for identification Respondents' Exhibit 93 was marked as an exhibit and received in evidence.)

11784 Cross-examination by Mr. Albert.

Q. Mr. Rosenzweig, there is no doubt in your mind, is there, that when you were testifying from memory, with out having refreshed your recollection from these notes, that what you have told us actually occurred at the various places of business of these manufacturers? A. To the best of my recollection, they are exactly what hap pened.

Q. And by the same token, the notes that you made at these places of business were also excelly what you heard; is that not so? A. That is right.

Q. Tell me, how did you make these notes? Do you

write shorthand? A. I do not.

Q. Would you mind describing briefly the exact mechanics of how these notes were made? A. They were made on a sheet of paper, penciled as the conversation took place.

Q. And it was made in the presence of the various people who were conversing? A. That is right.

Q. What did you do, usually sit at a table, or something? A. I sat right there and took them.

Q. In your lap, or did you sit at a table? A. At a desk, if we were seated at a desk.

Q. At a desk. Did you take down what was said by question and answer? A. I did.

Q. As each question and answer was put? A. Yes.

Q. And you got, I suppose, substantially everything that was said? A. Substantially; I may not have heard every word.

Q. Yes. A. But-

Q. But the substance of each sentence, and the important parts of each sentence you certainly put down; is that not so? A. I did.

Q. Now, coming back to when you left the office with Mr. Plaut. This was a rather unusual thing that he was asking you to do, was it not? A. It was.

Q. Not in the usual course of your business, was it?

Q. Did you make any inquiry of him as to the purpose of what you were required to do? A. I did not. He roughly told me on our way out. It was not unusual for me to accompany one of the buyers around the market.

Q. But you did not take notes every time you went around, did you? A. No. When we left the office he told me what was going to be done.

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- Q. Did he tell you- A. So that I knew what was going on.
- Q. What did he tell you that made you know what was going on? A. Well, he told me we were going to visit the various resources with w om Shillito had placed orders. and we were going to take notes as to the conversations as to why-why these orders were not shipped.
- Q. Well, did you ask him what is the necessity for making these notes? A. I was not an executive of Shillito, and inasmuch as I was told to go along by my superior, I went along without asking too many questions. I surmised——
- Q. Well, what were the questions that you did ask? A . What were the questions?
 - Q. Yes. A. Well, he told me we were going along to take these notes, and I had known of this controversy going on, and so I just went along with him; that is all.
 - Q. Well, look, Mr. Rosenzweig: Did not Mr. Plaut tell you, or did you not ask him, in words or substance, "Look, what are we goffig to take these notes for?" A. No, I did not, because Mr. Plaut told me what we were going to take these notes for.
 - Q. All right, what did he tell you? A. That we were just going to go around to these manufacturers and take notes as to their reasons for refusing to ship merchandise which we had on back order with them.
 - Q. Well, that was obvious from the mere fact that he asked you to take the notes; is that not so? A. That is so.
 - Q. Now, I am asking you why-withdraw that. I am asking you what reason he gave you for the taking of those notes, and you said that he gave you a reason? A No.
 - Q. I want to know the fact. A. I beg your pardon-I did not say he gave me a reason. It was not within my power to question Mr. Plaut as to why I was to go along with him.

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- Q. Where is the A.M.C. office? A. 1440 Broadway.
- O. Where is C. H. D. Robbins? A. 1375 Broadway.
- O. About how many blocks is that? A. Two blocks.
- Q. Two blocks. While you were walking along with him- A. Yes.
- Q. —you know Mr. Plaut very well, do you not? A. I know him quite well.
- Q. You are rather friendly with him, are you not? A. Friendly?
- Q. Yes, in a business sense. A. Well, certainly, in so far as a business acquaintance would be.
- Q. I mean— A. After all, he is an executive and I am not, so we do not usually get too familiar.
- Q. No, I do not mean that, familiar in the social sense, but certainly you discuss with him business policies and business principles, did you not? A. No, I won't say that I did. At that time I was in a very minor capacity and Mr. Plaut would have no reason to discuss business principles with me.
 - Q. Then you were coming along as an errand boy to ollow instructions? A. I was coming along—
- Q. To follow instructions? A. To follow instructions implicitly, and to record what was taking place, and for no other reason.
- Q. And naturally being there to follow instructions, and having no initiative or discretion of your own, you, of course, in taking down these notes, did not exercise any discretion to leave anything out, did you? A. No, I did not.
- Q. And you took down every single thing that was said?
 A. I put down what we considered, or what I considered at that time was the most important and pertinent facts in the conversation.
- Q. Then you did use discretion in what you took down?

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Q. A moment ago - A. As far as that ---

Q. -you told me you did not. A. -was concerned.

Q. What is the fact? A. That fact is, that I knew what I was going around for, and if the conversation did not pertain to what we were there for, I did not put it down.

Q. What were you there for? A. We were there to find out why our merchandise had not been shipped, and

whether or not it was going to be shipped.

Q. Now, you have been mentioning a controversy that was existent at that time; what was that controversy, do you know? A. Well, it was some sort of an argument, or—some difference between the AM.C. stores and the Guild.

Q Do you know what that difference was?

Mr. Martin: Objected to-

A. Oh-

Mr. Martin: —as immaterial and irrelevant. Examiner Averill: He can answer the question "yes" or "no." Do not tell us what it was. He

asked you if it was—read the question.

(Last question read.)

Examiner Averill: You may answer "yes" or "no" to that question.

A. Well, I

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Examiner Averill: "Yes" or "no."

A: I have a notion as to what it was.

Q. Give us briefly what your notion of it was. A. Well, the Guild claimed that we had not co-operated with their policies, or, in accordance with certain declarations.

Q. Yes. A. And that unless we complied with them, why, we were not going to be shown or shipped any merchandise from their members.

- Q. And you have used the term "red card." A. Yes, that is right.
- Q. You know what that means, do you not? A. Well, it is a prohibition to their members, so far as shipping merchandise to our stores is concerned.
- Q. And at the time that you went out with Mr. Plaut, had Shillito's been red carded? A. Shillito's had been red carded.
 - Q. And you knew of it? A. Yes, I knew of it.
- Q. And, of course, Mr Plaut knew of it, also? A Of course he did.
- Q. Now, Mr. Rosenzweig, you testified that in his conversation at C. H. D. Robbins, Mr. Plaut mentioned the fact and complained because the orders which were not being filled had been placed prior to the red carding; is that not so? A. That is right.
- Q. You are quite certain that Mr. Plaut made that remark at C. H. D. Robbins? A. I don't remember whether or not he mentioned, then, orders; I know the implication was there, because the orders had been placed prior to this.

By Mr. Albert.

Q. Let me understand you perfectly, Mr. Rosenzweig: Do you say now that you cannot recall whether or not Mr. Plant said that at C, H. D. Robbins? A. 1 said I don't recall whether that exact question was put at C. H. D. Robbins.

Q. No, you misunderstand. Let me start over again.

Examiner Averill: Do show him the paper and let him refresh his recollection from it.

Mr. Albert: Your Honor please, may I ask the indulgence of the Court? This is rather an important point, especially in the light of Mr. Plaut's

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testimony. All I want to know from Mr. Rosenzweig is this:

By Mr. Albert.

Q. Do you recall Mr. Plant saying at C. H. D. Robbin or complaining, or making a statement, in substance, that the goods which C. H. D. Robbins refused to ship had been placed before the red carding?

Mr. Martin: If your Honor please——
Examiner Averill: One moment.

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A. I don't remember whether he said that or not.

By Mr. Albert.

- Q. You do not remember that now. Is your memory worse now than it was fifteen minutes ago on direct eramination when you affirmatively testified that he did say that? A. I don't know whether he said—he exactly did say that question; I do know this, that every one of the words we were questioning had of necessity been placed before the red carding.
- Q. I am not asking you that. A. And therefore had to do—
- Q. We all know that. We are trying to find out what happened there. You testified on direct examination that Mr. Plaut said to one of the Robbins that the goods which had been ordered were ordered prior to the red carding. A. I did not say that Mr. Plaut said that; I said Mr. Plaut asked one of the people up there.

- Q. Yes, he asked one of the people what? A. No, I say I did not say it the way you did.
- Q. What is it— A. I don't recall whether he mentioned that question or not that you put.
- Q. What is it you now recall about that particular language? A. I don't remember.

Q. You don't remember it at all? A. I don't remember whether or not that specific question had been asked at Robbins'.

Q. Did you testify on direct examination while sitting there in response to a question from Mr. Martin, that Mr. Plant while at C. H. D. Robbins said that the orders which C. H. D. Robbins had accepted had been given prior to the red carding?

By Mr. Albert.

Q. You do not recall? A. I don't recall having been asked that.

Q. What you testified to in answer to Mr. Martin's 11 question? A. I don't recall Mr. Martin's question.

Q. Mr. Witness, will you examine Respondents' Exhibit 93 and point out if there is anything in there to the effect that Mr. Plaut made a statement that the orders which had been placed were placed prior to the red carding?

Mr. Martin Tast a moment, your Honor please, the exhibit is in evidence and will speak for itself. That is the best evidence. There it is in the exhibit.

Examiner Averill: Refer to the record, please, sir, of the interview at C. H. D. Robbins, read over what they say, and then answer his question as to whether you find anything there or not.

The Witness: My answer is "Yes."

Examiner Averill: All right.

By Mr. Albert.

- Q. Your answer is "Yes"? A. Not only by Mr. Plaut but by Mr. Fishel.
 - Q. What statement are you referring to?

(Witness refers to Respondents' Exhibit 93.)

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A. "Mr. Plaut: 'How are our orders coming along?" Inasmuch as no orders had been accepted by any firms after the red carding, these orders must of necessity have been placed prior to the red carding. Further on down in the visit Mr. Fishel asks a question, or made a statement that: "Neither we"—meaning Shillito's—"nor you"—meaning C. H. D. Robbins—"knew anything about this matter turning up at the time the purchases were made, so I cannot see how you can make it retroactive to apply to back orders." In other words, the red carding had to take place after the placing of the orders.

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Q. Then, let me ask you this: Did Mr. Plaut at any time while at C. H. D. Robbins make a statement to the effect that Shillito's had not been red carded? A. That Shillito's had not been red carded?

Q. Yes. A. Oh, now-

Mr. Martin: At what time? With reference to what time?

Mr. Albert: It the time that he was there.

A. No, I don't believe so. If I remember correctly, he made some sort of a statement to the effect that—or in response to a question—or in response to a statement that Mr. Lackritz made to the effect that White's had been red carded in connection with mentioning our orders, he made some statement with reference to White's or Shillito's. I do not recall anything exactly to the effect that Shillito's had not been red carded.

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Q. Yes. Reading from Respondents' Exhibit 93, I ask you if Mr. Lackritz said this: "That's right, but you knew at that time that we were not showing or shipping to White's?" Did Mr. Lackritz say that?

Mr. Martin: Hand him the exhibit and let him see.

A. I don't know. He may have-that may have-I know that is the subsequent-

By Mr. Albert.

Q. You have no recollection? A. Yes, I have an inkling as to the remark he made.

Q. Was that the remark he made? A. It may not be the exact words as given there.

Q. In substance? A. But that in substance is right.

Q. Did Mr. Plaut say this: "What has White got to do with Shillito?" A. Right.

Q. Did he say that? A. In substance?

Q. Did he in substance say this: "We weren't red 11810 carded and the order was placed by us and accepted by you in good faith"? . A. Sure, he may have said that.

Q. And- A. But what does that "we weren't red carded" refer to?

Q. What is it referring to? A. It refers to the fact at the time the orders were placed we had not been red carded.

Q. And that is what Mr. Plaut was referring to? A. Well, naturally we were trying to find out if our orders could be shipped.

Q. Yes. A. Mr. Plaut was referring to our orders during all of this conversation. The only orders we could have had placed there were those that were placed before the red carding of Shillito's.

Q. And in explanation of that you say that what Mr. Plant meant at that time was not that he was not red carded on March 4, but that he had not been red carded at the time the order was placed? A. That is right.

Q. That is all that I wanted to know. Where are the original memoranda that you made, Mr. Rosenzweig? I believe I destroyed them.

Q. Are you not certain whether you destroyed them or not? A. I did destroy them.

- Q. Then you mean you destroyed them? A. I destroyed them.
 - Q. Not that you believe you destroyed them? . A. Yes.
- Q. In what department are you the assistant buyer?

 A. Inexpensive dresses.
- Q. How long have you been in that position? A. In that department?
 - Q. Yes. A. In that position or in that department?
- Q. In that position of assistant buyer? A. A. few months.
- Q. Are you familiar with the declaration of co-operation?

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Mr. Martin: Objected to-

A. I am not.

Examiner Averill: Gentlemen, I sustain the objection, and I grant the motion to strike the answer if the witness answered. I did not hear him.

Mr. Martin: I did not hear him either.

Examiner Averill: But if there is a motion to strike it is sustained.

Mr. Albert: Exception.

Q.—when you heard any of the parties whom you visited on that day mention that they would pay—or would be required to pay—a fine of \$5,000 if they did ship goods, did that sound important to you?

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Mr. Martin; I object.

Examiner Averill: Do not answer it—the objection is sustained.

Mr. Albert: Exception.

By Mr. Albert

Q. When you were present at Joanne Junior's, you testified you had a conversation with Mr. Zinn, did you not? A. I did.

Q. You also testified that Mr. Zinn stated that he felt it would be necessary for him to pay a \$5,000 fine, if he shipped you goods, did you not?

Examiner Averill: No, he did not.

A. I don't think I testified to that.

Examiner Averill: He did not say it would be necessary for him to do it.

By Mr. Albert.

Q. Did you not testify that Martin Zinn stated, in words or substance, that he might be fined \$5,000?

Mr. Martin: I object.

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A. Well, I did not-

Mr. Martin: That is an entirely different ques-

- Q. Did you not? A. I testified that Mr. Zinn remarked that he would be subject to a fine of \$5,000 together with a possible penalty of not being able to secure silks from the Silk Guild, and I did not say he feared the penalty, because I don't know.
- Q. Did you at the time you heard him make those remarks think that this statement of a \$5,000 fine was important?

Mr. Martin: I object.

Examiner Averill: Objection sustained, and I shall ask Counsel to ask no further questions in connection with the \$5,000. It is absolutely immaterial, and nothing is to be gained by it. I think it has been gone into sufficiently now to cover the matter completely as may be necessary.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Albert.

Q. Will you look at Respondents' Exhibit 93, at your notes on Joanne Junior, and tell us whether or not you from your present recollection would say that you put down there—from your present recollection what you put down there as having transpired is an accurate transcription of everything that transpired at that time? A. I will not say that these were the only things that were said during the course of our visit there, no.

Q. You notice that there is nothing about any \$5,000 there? A. I do not notice anything about it there.

Q. Will you look and see? A. Yes. There is no mention 11819 here of \$5,000.

Mr. Martin: That is in connection with the Joanne Junior feature only?

The Witness: Yes.

Examiner Averill: In Respondents' Exhibit 93; that is what he said just now. I understood him to testify that it is not in there. That is what he said. I have not read it.

Mr. Martin: He is calling attention only to Joanne Junior.

The Witness: He is talking about Joanne Junior. He is not talking about the rest of it, as I understand it.

Mr. Martin: It is important and I want to make it clear that it is somewhere else in the exhibit.

Examiner Averill: But he was asked about this particular thing. The witness has confined his testimony to that part of it.

Mr. Martin: I understand that, but I just wanted to make certain that what Mr. Albert is referring to

By Examiner Averill.

Q. Let us get this clear now: You were referring to Joanne Junior in your testimony, were you not? A. That

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is what I had in mind. There is no mention here of \$5,000 in the Joanne Junior interview.

Mr. Albert: That is what I had reference to, Mr. Examiner.

Examiner Averill: You say you cannot find anything in the exhibit in connection with the Joanne Junior interview with regard to \$5,000?

The Witness: That is correct.

By Mr. Albert.

Q. Did you discuss at all with Mr. Plaut, Mr. Rosenzweig, who it was that asked you to do this, did it come up as a subject of conversation?

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Mr. Martin: I object as incompetent, immaterial, and irrelevant.

Examiner Averill: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. When you came back, Mr. Rosenzweig, did you discuss the matter with Mr. Bergdahl? A. No.

Q. Mr. Bergdahl is your immediate superior, is he not? A. Mr. Bergdahl is my superior.

Q. You were gone all day? A. I was gone all day.

Q. When you came back did he ask you where you had been? A. He did not.

Q. Is not part of your duties—or does the type of work that you do permit of you to leave the A.M.C. offices without accounting for the loss of time?

Mr. Martin: I object to that question as not being in conformity with what has already been testified to. He gave full and complete testimony in regard to that matter.

Examiner Averill: I think on cross-examination that would be within its proper purview.

Mr. Martin: I am only objecting to save time. Go ahead.

A. The nature of my job is to be out of the A.M.C. offices all day.

By Mr. Albert:

- Q. The nature of your job is to assist in buying, is it!

 A. At the present time. It was not then.
 - Q. At that time it was not? A. No.

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- Q. When you were going around with Mr. Plant? A. No.
- Q. What was it then? A. I said I was on the A.M.C. payroll assigned to F. & R. Lazarus and John Shillito Company in a very minor capacity.
- Q. What was that very minor capacity? A. That of following up orders to see to it that they were shipped on time.
- Q. And seeing to it that orders were shipped on time necessitated your being out of the office? A. Yes, certainly, I had to see that they shipped the orders, and I had to see that they shipped the orders, and I had to visit the various manufacturers. You do not sit in the office of a job of that kind.

- Q. This particular work you did; that was not in the ordinary and usual course of your duties? A. No.
 - Q. No? A. No.
- Q. But Mr. Plant gave you those orders? A: What orders?
- Q. To come around with him? A. No, Miss Simone told me.
 - Q. What? A. Miss Simon.
- Q. Who is Miss Simon? A. Miss Simon is the secretary of Mr. Plaut, and as secretary of Mr. Plaut she told me that permission had been given.

- Q. Have you—who gave you the permission? A. I do not know and I do not care. I did not ask.
- Q. Mr. Rosenzweig, at that time it was your duty to see that orders were shipped out on time; is that correct? A. Yes.
- Q. In the course of your duties, therefore, it was encumbent upon you to look at the orders; is that so?

Mr. Martin: I object as incompetent, immaterial, and irrelevant, and improper cross-examination. This witness was asked one line of questions, and one line of questions only, and that was he was asked if he accompanied Mr. Plaut to see these manufacturers and what took place there, and he has testified to that, and that is all he has testified to.

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Examiner Averill: Objection sustained.

Mr. Albert: Exception.

By Mr. Albert:

Q. Do you know whether or not the warranty clause was contained in the orders that were placed by the John Shillito Company with these various manufacturers?

Mr. Martin: I object as incompetent, immaterial, and irrelevant, and improper cross examination.

Examiner Averill: Sustained.

Examiner Averill: Gentlemen, we will adjourn to reconvene on Monday morning, December 7, 1936, at 10 A. M.

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(Whereupon, at 3:50 o'clock P. M., December 4, 1936, the hearing was adjourned.)